

2986

No. 15320

United States
Court of Appeals
for the Ninth Circuit

EDWARD A. FERGUSON and AMANDA FER-
GUSON, Husband and Wife,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Arizona

FILE

DEC 14 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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District Court of the United States,
District of Arizona

No. Civ-452—Pct.

EDWARD A. FERGUSON and AMANDA FER-
GUSON, Husband and Wife,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED COMPLAINT

For their amended claim and cause of action, plaintiffs allege:

1. Plaintiffs are husband and wife and are residents and citizens of Mohave County, Arizona. Jurisdiction of this matter arises under the Federal Tort Claims Act, Title 28, Chapter 85, Section 1346 (b), United States Code Annotated.

2. At all times herein mentioned the defendant, by and through the United States Air Force, was engaged in military operations, which said operations included the driving and operating of motor vehicles by United States Air Force personnel in and near Kingman, Arizona.

3. On or about June 24, 1955, at or near the intersection of Topeka Street and South Fifth Avenue, Kingman, Arizona, Francis Maka, a member of the United States Air Force, while acting within the course and scope of his office or employment and

acting in the line of his duty with the United States Air Force, was driving a truck belonging to the defendant in an easterly direction on said Topeka Street, Kingman, Arizona.

4. At said time and place, Francis Maka, as agent and servant of defendant aforesaid carelessly, recklessly and negligently drove and operated defendant's truck so as to cause the same to collide with a 1949 Lincoln sedan in which plaintiff, Amanda Ferguson, was a passenger.

5. As a direct and proximate result of the aforesaid careless, reckless, and negligent operation of defendant's said truck, plaintiff Amanda Ferguson was sorely and severely injured in that she received lacerations on the head, scalp, left arm and right arm, bruises and contusions of the knees and legs, injury to the left shoulder girdle and an injury to the brain; all of said injuries have precipitated, caused, or aggravated hypertensive cardiovascular disease; all of said injuries and their effects have caused plaintiff severe distress, headaches and sleeplessness; she has been made sick, sore, lame and disabled; all of said injuries and their effects have made plaintiff, Amanda Ferguson, extremely nervous and said injuries were exceedingly painful and will be painful in the future; due to said injuries plaintiff Amanda Ferguson required hospital, X-ray and medical care, the amount of which is not now presently known, and plaintiffs will seek leave of the court to amend when such amounts are ascertained. Said injuries left permanent disfiguring scars on

plaintiff Amanda Ferguson; said injuries and their effects have caused plaintiff Amanda Ferguson to lose time from her occupation and employment as a cook, wherein she was prior to the accident earning \$60.00 per week, and in addition said injuries and their effects have permanently impaired plaintiff Amanda Ferguson's capacity to earn a livelihood. Said injuries and their effects are permanent in nature and will require future medical treatment and care—all to plaintiff's damage in the sum of \$40,000.00.

Wherefore, plaintiffs pray judgment against defendant in the sum of \$40,000.00 together with costs of suit.

MOORE & ROMLEY,

By /s/ JOHN H. KILLINGSWORTH,
Attorneys for Plaintiffs.

[Endorsed]: Filed July 6, 1956.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT UNITED
STATES OF AMERICA

Comes Now the defendant, United States of America, by Jack D. H. Hays, United States Attorney for the District of Arizona, and Robert O. Royston, Assistant U. S. Attorney, and for its answer to the Complaint of the Plaintiffs on file herein, admits, denies and alleges as follows:

I.

The defendant admits the allegations contained in Paragraphs 1, 2 and 3 of the Plaintiffs' Complaint;

II.

Defendant admits that on June 24, 1955, a collision occurred between the automobile in which plaintiff Amanda Ferguson was a passenger and defendant's truck, but denies each and every other allegation contained in Paragraph 4 of Plaintiffs' Complaint;

III.

The defendant denies the allegations contained in Paragraph 5 of the Plaintiffs' Complaint;

Wherefore, the defendant, United States of America, demands that the plaintiffs take nothing by their Complaint and that the Complaint be dismissed, for its costs herein incurred, and for such other and further relief as the Court may deem just.

JACK D. H. HAYS,

United States Attorney

For the District of Arizona;

/s/ ROBERT O. ROYLSTON,

Assistant U. S. Attorney, Attorneys for defendant
U. S. A.

Affidavit of mail attached.

[Endorsed]: Filed November 22, 1955.

[Title of District Court and Cause.]

INTERROGATORIES TO PLAINTIFFS

Comes Now the defendant, The United States of America, by Jack D. H. Hays, United States Attorney for the District of Arizona, and Mary Anne Reimann, Assistant U. S. Attorney, and requests the plaintiffs to answer the following interrogatories, in accordance with Rule 33, Federal Rules of Civil Procedure:

1. Give the names and addresses of all doctors who have treated Amanda Ferguson for injuries received from the accident of June 24, 1955;
2. As a result of the accident of June 24, 1955, state in detail the injuries Amanda Ferguson received at the time of the accident;
3. State in detail what injuries, if any, Amanda Ferguson has today as a result of the said accident;
4. List individually all medical expenses and other special damages incurred by Amanda Ferguson as the result of the said accident of June 24, 1955;
5. List the present addresses of Edward A. Ferguson and Amanda Ferguson.

Defendant The United States of America hereby demands that plaintiffs answer the foregoing interrogatories under oath, as prescribed by Federal

Rules of Civil Procedure within fifteen (15) days from the date of service of said Interrogatories.

JACK D. H. HAYS,

United States Attorney

For the District of Arizona;

/s/ MARY ANNE REIMANN,

Assistant U. S. Attorney, Attorneys for defendant
U. S. A.

Affidavit of service by mail attached.

[Endorsed]: Filed March 19, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S ANSWERS TO
INTERROGATORIES

State of Arizona,
County of Mohave—ss.

Edward A. Ferguson and Amanda Ferguson, husband and wife, being first duly sworn upon oath do hereby answer the interrogatories filed by the United States of America in the above-entitled matter as follows:

1. Plaintiff Amanda Ferguson was examined by Arthur A. Arnold, M.D., Medical Building, Kingman, Arizona; Walter Brazie, M.D., Kingman, Arizona; she was examined once by John A. Westfall, M.D., Lois Grunow Clinic, Phoenix, Arizona; and she was examined once by John A. Eisenbeiss, M.D., Lois Grunow Memorial Clinic, Phoenix, Arizona.

2. As a result of the accident of June 24, 1955, plaintiff Amanda Ferguson received the following injuries: moderate concussion, laceration of the scalp, contusion of the right hip, multiple bruises, severe headaches, disturbed vision, dizziness and loss of memory. Said injuries and the shock accompanying same were a precipitating factor in bringing about or aggravating hypertensive cardiovascular disease to the extent that the plaintiff, Amanda Ferguson, cannot now carry on her occupation as a cook which she performed for approximately five years prior to the accident.

3. Plaintiff Amanda Ferguson as a result of said injuries has the following complaints: headaches, disturbed vision, dizziness, loss of memory, weakness, nervousness and hypertensive cardiovascular disease.

4. Medical expenses incurred by plaintiff Amanda Ferguson as a result of the accident of June 24, 1955, are as follows:

Mohave General Hospital	\$ 68.90
Lois Grunow Memorial Clinic (X-ray)	25.00
Walter Brazie, M.D.	44.00
Arthur A. Arnold, M.D.	50.00
John Eisenbeiss, M.D.	25.00
John F. Westfall, M.D.	15.00
	<hr/>
	\$227.90

In addition plaintiffs have incurred expenses for drugs and prescriptions, the exact amount of which is not at present known.

In addition plaintiff Amanda Ferguson has been unable to work since the accident of June 24, 1955, to date for a loss of forty-three weeks' work at \$66.00 per week in the total sum of \$2,838.00 to date.

In addition plaintiff is advised that she will never again be able to return to a gainful occupation and therefore will have future loss of earnings consistent with her life expectancy.

5. The present address of Edward A. Ferguson and Amanda Ferguson is 430 Gold Road Avenue, Kingman, Arizona.

/s/ EDWARD A. FERGUSON;

/s/ AMANDA FERGUSON.

Subscribed and sworn to before me this 12th day of April, 1956.

[Seal] /s/ NELLIE E. SMITH,
Notary Public.

My Commission expires: 6-2-59.

Affidavit of mail attached.

[Endorsed]: Filed April 23, 1956.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

Pursuant to Rule 36(a), Federal Rules of Civil Procedure, plaintiffs request defendant to admit the

truth of the following matters of fact within ten days after service of this request:

1. On June 24, 1955:

(a) Topeka Street in Kingman, Arizona, at and near the place of the collision in question consisted of pavement 35 feet wide;

(b) Adjoining Topeka Street on the North was a dirt shoulder, 14 feet wide;

(c) Adjoining Topeka Street on the South was a dirt shoulder, 12 feet wide;

(d) The area along Topeka Street, west of its intersection with South 5th Street for a distance of at least 600 feet, is a residence district.

2. Prior to and at the time of the collision which is the subject matter of the above-entitled action:

(a) Plaintiff Amanda Ferguson was sitting as a passenger in an automobile operated by Estella Christine Hopkins;

(b) The Hopkins' automobile was parked, parallel to Topeka Street, facing in a westerly direction, and on the southerly dirt shoulder;

(c) No portion of the Hopkins' automobile was on the pavement of Topeka Street;

(d) Adjoining the Hopkins' automobile to the west was an automobile operated by Mabel E. Redding;

(e) The Redding automobile was parked parallel to Topeka Street, facing in an easterly direction and on the southerly dirt shoulder;

(f) No portion of the Redding automobile was on the paved portion of Topeka Street;

(g) The rear end of the Hopkins' automobile was approximately 28 feet west of the west edge of South 5th Street;

(h) The front end of the Redding automobile was approximately 50 feet west of the west edge of South 5th Street.

3. Immediately prior to the collision in question Francis T. Maka was driving a United States Air Force truck in an easterly direction along Topeka Street:

(a) At a speed in excess of 35 miles per hour;

(b) At a speed which prevented him from controlling the movement of said truck;

(c) Without keeping any lookout for other vehicles parked on the dirt shoulder adjoining Topeka Street to the south;

(d) Without keeping said truck under control so as to prevent it from leaving the paved portion of Topeka Street.

4. The United States Air Force truck above mentioned:

(a) Was in good mechanical condition and contained no defects;

(b) Ran off the paved portion of Topeka Street and collided with the left side of the Redding automobile, shoving it 23 feet in a southeasterly direction;

(c) Continued on and ran into and upon the right front and hood of the Hopkins' automobile, shoving it 54 feet in an easterly direction;

(d) Continued on for approximately 55 feet and turned over on its left side.

5. Francis T. Maka was cited by the Kingman police, and subsequently pleaded guilty to the charge, for reckless driving at the time of the collision in question.

6. Plaintiff Amanda Ferguson could not have avoided the collision in question.

7. The collision in question was caused solely by the careless and negligent operation of the United States Air Force truck by Francis T. Maka.

MOORE & ROMLEY;

By /s/ JARRIL F. KAPLAN,
Attorneys for Plaintiffs.

Affidavit of mail attached.

[Endorsed]: Filed June 18, 1956.

[Title of District Court and Cause.]

DEFENDANT'S ANSWERS TO REQUEST
FOR ADMISSIONS

Comes Now Mary Anne Reimann, Assistant United States Attorney, on behalf of the defendant, United States of America, and makes the following

opinion and a conclusion of defendant upon matters to be determined in the trial of the case.

JACK D. H. HAYS,

United States Attorney

For the District of Arizona;

/s/ MARY ANNE REIMANN,

Assistant U. S. Attorney,

Attorneys for Defendant.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 26, 1956.

[Title of District Court and Cause.]

MINUTE ENTRY OF JULY 6, 1956

Honorable James A. Walsh, United States District Judge, Presiding.

This case comes on regularly for trial this day. Jarril F. Kaplan, Esq., is present for the plaintiffs. Mary Anne Reimann, Esq., Assistant United States Attorney, is present for the defendant.

Both sides announce ready for trial.

It Is Ordered that the plaintiff's Motion for Leave to File Amended Complaint is granted, which Amended Complaint is now endorsed filed.

Counsel for the Government admits the Government's liability. Counsel stipulate issues to be tried

are the extent of damages and injuries sustained by plaintiff Amanda C. Ferguson.

Plaintiffs' Case:

Amanda C. Ferguson is sworn and examined in plaintiffs' behalf.

The following plaintiffs' exhibits are admitted in evidence:

1. Photostat of Hospital Records;
2. Photostat of Hospital records;
3. Group of drug, medical and hospital bills.

The following witnesses are sworn and examined in the plaintiffs' behalf:

Clara Osterman;
Estelle C. Hopkins;
Walter Brazil.

At 12:00 o'clock noon, It Is Ordered that the further trial of this case is continued to 1:30 o'clock p.m., this date, to which time, the parties and counsel are excused.

Subsequently, at 1:30 o'clock p.m., the parties and all counsel being present, pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Dr. John Finley Westfall is sworn and examined in the plaintiffs' behalf.

The Following plaintiffs' exhibits are admitted in evidence:

4. Photograph;

Ferguson was sitting. The government admits that it is liable for the injuries and damages sustained by Mr. and Mrs. Ferguson.

Prior to and at the time of the collision Mrs. Ferguson was a woman in apparent good health. She had twelve children and many grandchildren. She had worked five steady years as a cook in a cafe, earning \$66.00 per week (\$3,432.00 per year). She had some high blood pressure, but it was entirely non-symptomatic and non-disabling. She had never been troubled by nervousness, faulty memory, general weakness, dizziness, disturbed vision or severe headaches. She visited easily with her children and grandchildren, performed all her own housework and, in addition, she was the sole means of support for herself and her husband.

The force of the impact to which Mrs. Ferguson was subjected is clearly demonstrated by the photographs in evidence. The hospital records show that Mrs. Ferguson received a cerebral concussion, a laceration over the right eye, lacerations of the right arm and injury to the shoulder and bruises of both knees. She was hospitalized for two days and was then allowed to go home. She remained home for approximately one week and then attempted to return to her former employment. She remained on the job for four weeks, but only because her daughter was there to help her. She was very weak; her memory failed her; she had severe headaches and dizziness. After four weeks she could continue no

longer and was forced to give up in her attempt to work.

At this time, approximately five weeks after the accident, her vision became blurred; she became nauseous; she lost her sense of direction; she became extremely nervous; and her headaches were intractable. She was re-hospitalized for four days. But her symptoms continued. She was sent to Phoenix to be examined by Dr. John Eisenbeiss, a specialist in neurosurgery. Dr. Eisenbeiss made no positive neurological findings and sent her to Dr. John F. Westfall, a specialist in internal medicine. Upon examination Dr. Westfall determined that Mrs. Ferguson's symptoms were caused by an aggravation of her pre-existing, dormant, hypertensive heart and placed her on drugs to reduce her blood pressure.

Her condition from September 26, 1955, to the time of the trial was closely observed by Dr. Walter Brazie who had previously been Mrs. Ferguson's family physician. Dr. Brazie has seen Mrs. Ferguson for every two weeks for the last ten months. He has used all of the various drugs, and combinations thereof, available for the reduction and control of her blood pressure, without success. He has been unable to make her condition non-symptomatic. At the present time Mrs. Ferguson continues to be extremely nervous and to be troubled with faulty memory and general weakness. She can only perform light household duties.

It is the unqualified opinion of both Dr. Brazie and Dr. Westfall that the accident and resultant in-

juries aggravated Mrs. Ferguson's pre-existing hypertensive heart disease and precipitated her present condition, which is disabling. There was no testimony to the contrary. While the doctors both acknowledge the possibility that her present condition might have come on even though she had not been in an accident, they unhesitatingly testified under examination by the court, that it probably would not have so occurred.

It is the unqualified opinion of both Dr. Brazie and Dr. Westfall that Mrs. Ferguson's condition has now become stationary and that she will never again be able to return to a gainful occupation. This testimony was likewise uncontradicted. True, Dr. Born testified that by the use of new drugs Mrs. Ferguson's blood pressure might be controlled at a certain level, and that if it was controlled so as to produce no symptoms, she could then return to work. The effect of Dr. Born's testimony in this regard was merely to acknowledge a possibility; the law regards this as insufficient medical proof. *Hartford Acc. Etc., Co. vs. Industrial Com.*, 38 Ariz. 307, 299 Pac. 1026. Furthermore, when pressed to be more certain, Dr. Born testified that he did not know whether or not Mrs. Ferguson's blood pressure could ever be controlled or her condition rendered non-symptomatic.

“The general rule seems to be that where the result of the accident is to bring into activity a dormant or incipient disease, or one to which the injured person is predisposed, the defendant is

liable for the entire damages which ensue, for it cannot be said that the development of the disease as a result of the injury was not the consequence which might naturally or ordinarily follow as a result of the injury, and therefore, the negligent person may be held liable therefor. In other words, if a latent condition itself does not cause pain, suffering, etc., but that condition plus an injury caused such pain, the injury, and not the latent condition, is the proximate cause."

15 AM. Jur. Damages, Sec. 81, p. 490.

The fact that Mrs. Ferguson had a weak or diseased heart does not relieve the government from liability for all the damages she has sustained because the uncontradicted testimony established that the accident and consequent injuries had the effect of aggravating such disease and permanently incapacitating her from performing the work she had been doing for the past five years. She is entitled to damages for the full amount of her disability as though it had been produced originally and directly by the injury. *Hartford Acc. etc., vs. Industrial Com.*, 38 Ariz. 307, 299 Pac. 1026, *supra*; *United States v. Fotopulos* (C.A. 9), 180 Fed. (2nd) 631.

To the time of trial, Mr. and Mrs. Ferguson had incurred \$288.90 in medical, hospital and drug expenses, and Mrs. Ferguson had been deprived of \$3,300.00 in earnings. The court has awarded judgment in the sum of \$10,288.90. Thus, only \$6,700.00 (less than two years' earnings) has been awarded for loss of future earnings, pain and suffering to the

time of the trial and pain and suffering to be endured in the future.

Mrs. Ferguson is a woman fifty-five years of age with a life expectancy, according to the American Experience Table of Mortality, of 17.40 years.

The present value of \$3,432.00 per year for seventeen years, invested at 3%, is \$45,186.06. At 3½%, it is \$43,419.26. At 4%, it is \$41,752.68. At 4½%, it is \$40,179.11. The very least to which Mrs. Ferguson is reasonably entitled for loss of future earnings is one-half of one of these sums—a minimum of \$20,000.00. In addition, she is entitled to a reasonable sum for the permanent facial scar she bears, the pain and suffering she has endured up to the time of trial, and the pain and suffering she will endure for the remainder of her lifetime.

At the trial the court examined the plaintiff and Drs. Brazie and Westfall who were called to testify in her behalf. The court also questioned Dr. Born who examined the plaintiff on behalf of the government and was called and qualified by the government as an expert witness in its case. The court undoubtedly has the right to examine and cross-examine witnesses. *Tom Reed Gold Mines Co. vs. Brady*, 55 Ariz. 133, 99 Pac. (2d) 97. It was evident from the questions asked that the court had some ideas of its own with regard to the injuries sustained and the damages claimed by the plaintiffs in this case, and that it was seeking by the examination to confirm or dispel its ideas. This is understandable, particularly

since the injury was one related to the heart and the effect of the accident thereon, a subject concerning which a lay person has little knowledge as compared to the medical expert.

But the court's examination served only to confirm that the accident had aggravated Mrs. Ferguson's pre-existing condition and permanently disabled her from engaging in a gainful occupation. Although the court as yet has made no findings of fact, it would appear from the examination made by the court as aforesaid and the fact that the judgment awarded the plaintiff only \$6,700.00 over and above the special damages incurred to date, that the court concluded that Mrs. Ferguson was not permanently disabled or incapacitated from performing her work. If the court did so conclude, it was in error. *Hewett vs. Industrial Commission*, 72 Ariz. 203, 232 Pac. (2d) 850, the Arizona Supreme Court held that the cause of a human being's death, when not patently discernible by a layman, must be left exclusively to medical experts. The same principle, we submit, applies to the cause of disability resulting from heart disease. The rule is well stated in *Guarantee Ins. Co. vs. Industrial Acc. Commission* (Cal.), 199 Pac. (2d) 12, at page 15, as follows:

“* * * when the diagnosis of a physical condition depends essentially upon the knowledge, skill and experience of medical expert witnesses, and is not within the common knowledge of non-expert laymen, the evidence of such medical experts is conclusive upon that issue.”

In *Hammond vs. A. J. Bayless Markets, Inc.*, 58 Ariz. 58, 65, 117 Pac. (2d) 490, the Arizona Supreme Court held that:

“In actions for an attorney’s fees, while expert testimony as to the value of such service is admissible, and should be given due weight, it is not conclusive on the court, for the latter is itself an expert on that question and may consider its own knowledge and experience in determining a reasonable and proper fee, and in the light of such knowledge may form an independent judgment and determine the reasonable compensation to be allowed.”

The language we have underscored in the foregoing quotation states the reason for the rule, namely: the court “is itself an expert” on the question of attorney’s fees. It is not an expert on the medical question involved in this case.

Since there was no conflict in the evidence with regard to the cause of Mrs. Ferguson’s disability and its permanency, the court may not substitute its lay opinion on the question for the opinion of the experts. Compare: *Kinney vs. Sacramento City Employees’ Retirement Sys. (Cal.)*, 176 Pac. (2d) 775. We therefore urge the court to reconsider the evidence in this case, and upon such reconsideration to open the judgment and increase the same to an amount which will fairly and adequately compensate the plaintiffs for the damages which they have sustained.

Respectfully submitted,

MOORE & ROMLEY,

By /s/ JARRIL F. KAPLAN,
Attorneys for Plaintiffs.

Affidavit of mail attached.

[Endorsed]: Filed July 12, 1956.

[Title of District Court and Cause.]

MINUTE ENTRY OF JULY 13, 1956

Honorable James A. Walsh, United States District
Judge, Presiding.

It Is Ordered that counsel for the plaintiffs prepare, serve and lodge proposed findings of fact and conclusions of law in this case in accordance with the local court rules. Such findings of fact shall include inter alia, finding that the injuries sustained by plaintiff Amanda Ferguson in the collision involved in this case proximately caused said plaintiff's temporary total disability with the following consequent damages: loss of earnings \$3,000.00; loss of earning power \$6,000.00; pain and suffering \$1,000.00; medical and hospital expenses \$288.90.

In the District Court of the United States for the
District of Arizona

No. Civ.-452-Pet.

EDWARD A. FERGUSON and AMANDA FER-
GUSON, Husband and Wife,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial and the Court, having duly considered the evidence and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

Findings of Fact

1. Plaintiffs bring this action to recover damages for personal injuries inflicted by a member of the United States Air Force pursuant to the Federal Tort Claims Act, Aug. 1, 1947, ch. 446, 61 Stat. 722 (28 U.S.C.A., Secs. 1346, 1402, 2402, 2411, 2412, 2674-2676).

2. On June 26, 1955, plaintiff Amanda Ferguson was sitting as a passenger in an automobile. The automobile was parked entirely off the paved portion of Topeka Street in Kingman, Arizona. While she was sitting there, a truck belonging to the

United States Air Force and driven by a member thereof along Topeka Street, ran off the roadway and into the parked automobile.

3. The government admits liability for the collision and the injuries and damages caused thereby.

4. As a proximate result of the collision plaintiff Amanda Ferguson received a cerebral concussion, a laceration above the right eyebrow, lacerations on the right arm and an injury to the left shoulder. As a further proximate result of the collision the laceration above the right eyebrow has left a permanent scar and Amanda Ferguson's pre-existing hypertensive heart condition was aggravated to the extent that it caused temporary total disability.

5. Plaintiffs have consequently been damaged in the total sum of \$10,288.90, as follows:

- (a) Loss of earnings—\$3,000.00.
- (b) Loss of earning power—\$6,000.00.
- (c) Pain and suffering—\$1,000.00.
- (d) Medical and hospital damages—\$288.90.

Conclusions of Law

I.

Defendant is liable to the plaintiffs for all damages proximately caused by the collision which occurred June 26, 1955.

II.

Defendant is liable to plaintiffs in the sum of \$10,288.90.

Dated this 19th day of July, 1956.

/s/ JAMES A. WALSH,
District Judge.

Affidavit of service by mail attached.

Proposed Findings: [Endorsed]: Filed July 17, 1956.

[Endorsed]: Filed July 19, 1956.

[Title of District Court and Cause.]

MOTION TO AMEND FINDINGS OF FACT

Pursuant to Rule 52(b) Federal Rules of Civil Procedure, 28 U.S.C.A., plaintiffs above named respectfully move the Court to amend the findings of fact heretofore settled, approved and signed by:

1. Deleting from the fourth paragraph thereof the words "temporary total disability" and inserting in lieu thereof the words "permanent total disability," and

2. By increasing the amount of the judgment to a sum which will fairly and adequately compensate the plaintiffs in accordance with a finding of permanent total disability.

MOORE & ROMLEY,

By /s/ JARRIL F. KAPLAN,
Attorneys for Plaintiffs.

Affidavit of service by mail attached.

[Endorsed]: Filed July 26, 1956.

[Title of District Court and Cause.]

MINUTE ENTRY OF AUGUST 13, 1956

Honorable James A. Walsh, United States District Judge, Presiding.

The Plaintiffs' Motion to Alter and Amend Judgment or in the Alternative for a New Trial and Motion to Amend Findings of Fact come on for hearing this day.

Jarril Kaplan, Esq., appears on behalf of plaintiffs. Robert O. Royston, Esq., Assistant United States Attorney, is present for the defendant.

Said motions are now duly argued by respective counsel.

It Is Ordered that Motion to Alter and Amend Judgment or in the Alternative for a New Trial and Motion to Amend Findings of Fact are each and all denied.

(Docketed August 13, 1956.)

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Edward A. Ferguson and Amanda Ferguson, plaintiffs in the above-entitled action, appeal to the United States Court of Appeals, Ninth Circuit, from the judgment entered in said action on July 9, 1956, from the order of August 13, 1956, denying the plaintiffs' motion to alter or amend judgment, or in the alternative,

for a new trial, and from the order of August 13, 1956, denying plaintiffs' motion to amend findings of fact.

Dated this 21st day of August, 1956.

MOORE & ROMLEY,

By /s/ JARRIL F. KAPLAN,
Attorneys for Plaintiff.

[Endorsed]: Filed August 21, 1956.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents:

That Edward A. Ferguson and Amanda Ferguson, husband and wife, as principals, and Anchor Casualty Company, as surety, are held and firmly bound, jointly and severally, unto The United States of America, defendant and appellee in the above-entitled cause, in the penal sum of Two Hundred Fifty Dollars (\$250.00) lawful money of the United States of America to be paid to the above-named appellee, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents:

Sealed with our seals and dated this 21st day of August, 1956.

The condition of the above obligation is such that,

Whereas, the above-entitled court on July 9, 1956, rendered judgment herein in favor of plaintiffs and

against defendant, and on August 13, 1956, made and entered herein an order denying the motion of plaintiffs to alter or amend the judgment, or in the alternative, for a new trial, and on August 13, 1956, made and entered herein an order denying the motion of plaintiffs to amend the findings of fact, and plaintiffs Edward A. Ferguson and Amanda Ferguson having this day given written notice of appeal to The United States Court of Appeals, Ninth Circuit, from said judgment and orders;

Now Therefore, if plaintiffs Edward A. Ferguson and Amanda Ferguson shall prosecute their appeal to effect and shall well and truly pay the costs if the said appeal is dismissed, or the said judgment and orders affirmed, or such costs as The United States Court of Appeals, Ninth Circuit, may award if said judgment and orders are modified, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00), then this obligation shall be null and void; otherwise to be and remain in full force and effect.

EDWARD A. FERGUSON and
AMANDA FERGUSON,

By /s/ JARRIL F. KAPLAN,
Their Attorneys.

[Seal] ANCHOR CASUALTY
COMPANY,

By /s/ HUGH S. SUGGS,
Its Attorney in Fact.

[Endorsed]: Filed August 21, 1956.

In the District Court of the United States for the
District of Arizona

No. Civil 452

EDWARD A. FERGUSON and AMANDA F.
FERGUSON,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Appearances :

MOORE & ROMLEY, By
JARRIL F. KAPLAN,
For the Plaintiffs.

MARY ANNE REIMANN,
Assistant United States Attorney,
For the Defendant.

The above-entitled case came up for trial on the 6th day of July, 1956, at Prescott, Arizona, before the Honorable James A. Walsh, Judge, and the following proceedings were had, to wit:

The Clerk: Civil 452-Prescott, Edward A. Ferguson and Amanda Ferguson, husband and wife, plaintiffs, versus The United States of America, defendant.

Mr. Kaplan: The plaintiffs are ready, your Honor.

Miss Reimann: The government is ready, your Honor.

The Court: For the record perhaps there should be an order granting the plaintiffs leave to file the amended complaint which is endorsed as filed in this cause on June 18, 1956.

Mr. Kaplan: Thank you, your Honor.

The Court: I understand counsel have some agreement as to the question of liability in this case?

Miss Reimann: That is correct, your Honor. The Government will admit the liability in the case.

The Court: So that the issue will be the matter of injuries and damages, is that right?

Mr. Kaplan: That is right.

The Court: Very well, you may proceed.

Mr. Kaplan: Call Mrs. Amanda Ferguson.

Your Honor, before I begin the interrogation of this witness, I have under subpoena and present in the courtroom Mr. Dale H. May, who was to have been a witness on the question of liability. I wonder if it would not be in order at this time to request the Court to excuse the witness from the subpoena and allow him to return to his home?

The Court: Mr. May, you will be excused, sir. You will not need to attend any further.

AMANDA FERGUSON

called as a witness herein, having been first duly sworn, testified as follows: [2*]

Direct Examination

By Mr. Kaplan:

Q. Will you state your name, please?

A. Amanda Ferguson.

Q. Where do you live, Mrs. Ferguson?

A. 430 Goldroad Avenue, Kingman, Arizona.

Q. You reside at that address with your husband? A. Yes.

Q. What is his name?

A. Edward Ferguson.

Q. How long have you live in Kingman, Arizona? A. About six years.

Q. How long have you lived in Arizona, just approximately? A. About thirty years.

Q. Mrs. Ferguson, you were involved in an automobile accident on June 24 of 1955, is that correct? A. Yes.

Q. That accident occurred in the City of Kingman, Arizona? A. Yes.

Q. At the time of the accident, Mrs. Ferguson, I believe you were a passenger in an automobile, is that correct? A. Yes.

Q. And will you state just briefly what happened. The Government has admitted liability so we are not interested in establishing fault, but so the Court will get a background of [3] what hap-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Amanda Ferguson.)

pened to you in the accident, will you tell the Court briefly what occurred?

A. Well, my daughter and I had stopped at a residence, we had some business to attend to. We stayed in the house about five minutes and came out and got into the car. Just after we got into the car we saw a truck coming, an Air Force truck, and about half a block away I noticed he left the street and was driving over by the curb; and I thought probably he was going to stop, but he didn't stop and he hit a car that was parked in front of us and hit us.

Q. Mrs. Ferguson, will you please tell the Court what happened to you after the truck ran into your car?

A. Well, I had an injury over my right eye and——

Q. Did you remain in the seat of the car?

A. Yes, I did, until the ambulance came.

Q. You were not thrown from the seat?

A. No.

Q. All right. Will you go ahead and tell the Court then what injuries you received in the accident?

A. A cut over the right eye.

Q. In that connection, Mrs. Ferguson, I believe you still have the scar over your right eye?

A. Yes.

Q. From that cut? A. Yes. [4]

Q. It is readily visible? A. Yes.

Q. Go ahead, Mrs. Ferguson.

A. Cuts on the arm and bruises.

(Testimony of Amanda Ferguson.)

Q. Which arm did you receive cuts on?

A. Right arm.

Q. And where were the bruises?

A. Both of my knees were bruised and my right leg.

Q. And after the ambulance arrived where were you taken, Mrs. Ferguson?

A. To the Mohave General Hospital.

Q. What doctor attended you at the hospital?

A. Dr. Arthur Arnold.

Q. What did Dr. Arnold do for you when you arrived at the hospital?

A. He didn't get there for almost thirty minutes. When he got there he put several stitches in this cut over my eye and had the nurses put me to bed.

Q. How long did you remain in the Mohave General Hospital? A. Two days.

Q. And then you were released? A. Yes.

Q. And after you were released from the hospital what did you do, Mrs. Ferguson?

A. Well, I stayed in bed for a few days. Then after a [5] week I went back to work.

Q. Mrs. Ferguson, you seem to be having some trouble with your memory. Has that existed since the accident? A. Yes.

Q. Mrs. Ferguson, prior to this accident were you employed? A. Yes.

Q. By whom? A. Mrs. Clara Osterman.

Q. Where? A. At the Casa Linda Cafe.

Q. At the Casa Linda Cafe in Kingman?

(Testimony of Amanda Ferguson.)

A. Yes.

Q. Your boss was Mrs. Clara Osterman?

A. Yes.

Q. What were your duties at the cafe?

A. I was cook.

Q. What did your duties as cook require you to do?

A. I brought up the dinner and made menus and ordered supplies, kept the supplies up; and also for about three hours at that time I worked on the grill.

Q. And also did you have to do any of the baking? A. Yes, I did the baking.

Q. Did your duties require that you be in good physical condition? A. Yes. [6]

Q. Did they require that you have a retentive memory? A. Yes.

Q. Will you explain to the Court why that was necessary?

A. Well, part of that time I had to take orders from the waitresses and then I had to check the supplies, keep supplies up.

Q. How about the menus, Mrs. Ferguson?

A. Help prepare the menus.

Q. Mrs. Ferguson, how long had you been employed by Mrs. Osterman at the Casa Linda Cafe as a cook and performing the duties you just described? A. Almost five years.

Q. During that period of time had you ever missed a day's work because of illness of any kind?

A. Very few.

(Testimony of Amanda Ferguson.)

Q. When did you miss those few days and what was the reason for it?

A. Well, when I missed, each time I missed it was on account of a cold, common cold or flu.

Q. How much did you earn at the cafe?

A. About \$66.00 a week.

Q. Mrs. Ferguson, your husband has not been employed for sometime, is that correct?

A. No, he hasn't.

Q. You were the sole money earner in the family at the [7] time of the accident.

A. Yes.

Q. Are you trained or educated to perform any other occupation for the purpose of earning a living?

A. No.

Q. In other words, when you have been occupied outside the home it has been as a cook or something of that nature?

A. Yes.

Q. Mrs. Ferguson, will you please tell the Court what the condition of your health was prior to this accident, so far as you know?

A. Well, it was fairly good.

Q. And prior to the accident had you ever been troubled with severe headaches?

A. Not—I wasn't bothered but very little with headaches.

Q. Have you ever been troubled with loss of memory?

A. No.

Q. Have you ever been troubled with dizziness or disturbed vision?

A. No.

Q. Had you ever been disturbed with a general

(Testimony of Amanda Ferguson.)

condition of weakness? A. No.

Q. I believe you have eleven children, all living and well? [8] A. Twelve.

Q. Twelve, excuse me. How old are you, Mrs. Ferguson?

A. Sixty-five—pardon me, fifty-five.

Q. Mrs. Ferguson, you say that after you were released from the hospital you remained at home for approximately a week, then you attempted to go back to work at the cafe, is that correct?

A. Yes.

Q. Will you please tell the Court what you found your physical condition to be when you tried to go back to work?

A. I had headaches constantly and I couldn't remember as I should and I was weak, I would get weak.

Q. Were you able to continue in your occupation as a cook? A. No.

Q. Have you ever returned since that one brief period of time after you were discharged from the hospital—— A. No.

Q. ——have you ever returned back to work?

A. No.

Q. Have you ever felt able to return back to work? A. No, I haven't.

Q. Mrs. Ferguson, after you tried to go back to work and found you were not able to perform your duties, did anything occur with regard to your physical condition? [9] A. Yes.

Q. Will you please tell the Court what that was?

(Testimony of Amanda Ferguson.)

A. Well, I suddenly—I had an attack and my vision wasn't right. I would look at objects, I couldn't see the whole object and I was dizzy.

Q. What did you find with regard to nervousness? A. I was very nervous.

Q. What happened at that time then, Mrs. Ferguson, when you received this attack of these symptoms? A. I was hospitalized again.

Q. By whom? A. By Dr. Arnold.

Q. Where were you hospitalized at that time?

A. Mohave General Hospital at Kingman.

Q. How long did you remain in the Mohave General Hospital at that time?

A. Four days.

Q. Was there any noticeable improvement in your condition when you were discharged from the hospital at that time?

A. A little. I still couldn't—my vision wasn't as it should be and I was weak.

Q. Did Dr. Arnold suggest that you see a specialist in Phoenix? A. Yes.

Q. Did you see a specialist in Phoenix? [10]

A. Yes.

Q. Whom did you first see in Phoenix?

A. Dr. Westfall.

Q. Did you see Dr. Westfall first, or did you see another doctor? A. No, Dr. Eisenbeiss.

Q. Dr. John Eisenbeiss? A. Yes.

Q. Who is a neuro surgeon? A. Yes.

Q. After Dr. John Eisenbeiss examined you he referred you to Dr. Westfall, is that correct?

(Testimony of Amanda Ferguson.)

A. Yes.

Q. You were referred to Dr. Westfall?

A. Yes.

Q. In Phoenix? A. Yes.

Q. Then you returned to your home in Kingman? A. Yes.

Q. I believe at the conclusion of Dr. Westfall's examination of you he gave you a prescription, is that right? A. Yes.

Q. I take it you wouldn't know the name of that prescription?

A. No, but I have the bottle with me. [11]

Q. Mrs. Ferguson, when you returned to Kingman did you continue to see Dr. Arnold?

A. Yes, I saw him for about once, I believe. I can't remember for sure. I don't believe I saw Dr. Arnold but once after that.

Q. Did you submit yourself to the care of another physician in Kingman? A. Yes.

Q. Who was that?

A. Dr. Walter Brazie.

Q. How often have you continued to see Dr. Brazie since the first time you went to see him?

A. Every two weeks.

Q. I believe you first saw Dr. Brazie around the latter part of September of last year, is that correct? A. Yes.

Q. For the injuries you received in this accident? A. Yes.

Q. You have continued to see Dr. Brazie every two weeks since that time? A. Yes.

Q. When was the last time you saw Dr. Brazie?

(Testimony of Amanda Ferguson.)

A. Tuesday.

Q. Tuesday of this week? A. Yes. [12]

Q. What has he done for you during these visits?

A. He has treated me for a nervous condition and hypertension.

Q. In what way?

A. He has given me medicine.

Q. Mrs. Ferguson, these symptoms which you described which first appeared after the accident, loss of memory, disturbed vision, headaches, dizziness, general feeling of weakness and nervousness, how long after the accident did they persist?

A. Several months.

Q. Do you still have any of those symptoms?

A. I am very nervous and still have the weakness and dizziness at times.

Q. How is your memory now as compared——

A. My memory is not good.

Mr. Kaplan: Your Honor, Plaintiffs' Exhibits 1 and 2 have been marked for identification; they are the photostats of the hospital records of the Mohave General Hospital in Kingman. We offer those exhibits in evidence.

Miss Reimann: No objection, your Honor.

The Court: They may be received.

(Plaintiffs' Exhibits 1 and 2 received in evidence.)

Q. (By Mr. Kaplan): Mrs. Ferguson, I hand you a group of bills which have been marked to-

(Testimony of Amanda Ferguson.)

gether as one exhibit, Plaintiffs' Exhibit 3 for identification. Will you please [13] review those bills and tell me whether they represent all of the actual hospital, medical and drug bills you have incurred as a result of the accident? A. Yes.

Q. Have you paid those bills?

A. Not all of them.

Mr. Kaplan: We offer Plaintiffs' Exhibit 3 in evidence.

Miss Reimann: I have no objection.

The Court: It may be received.

(Plaintiffs' Exhibit 3 received in evidence.)

Q. (By Mr. Kaplan): Mrs. Ferguson, since this accident have you at any time felt in good enough physical condition to return to your work?

A. No.

Q. You have a rather large family, and do many of them reside in Kingman?

A. Two daughters and three sons.

Q. Reside in Kingman? A. Yes.

Q. Do they in turn have children, are you a grandmother? A. Yes, I am.

Q. How often do you see your children and grandchildren? A. Oh, almost every day.

Q. And has that been true most of the years you have lived in Kingman? [14] A. Yes.

Q. Have you noticed any difference in your present demeanor and action when your children and grandchildren visit you now as compared to before the accident? A. Yes, I do.

(Testimony of Amanda Ferguson.)

Q. Will you please tell the Court as fully as you can what difference you notice in that regard?

A. I am so nervous that when too many of them get there at one time and get a little noisy I have to go to another room and get out of it.

Q. Had that condition ever existed prior to the accident? A. No.

Mr. Kaplan: You may cross-examine.

Cross-Examination

By Miss Reimann:

Q. Mrs. Ferguson, you say you live in Kingman. Do you live alone with your husband, or do any of the children live with you?

A. I have one son.

Q. How old is that son?

A. He is eighteen.

Q. Is he the youngest boy?

A. Yes, he is.

Q. He is your youngest child? [15]

A. Yes, that is correct.

Q. They range from 18 on up, all twelve of them? A. Yes.

Q. Does he work?

A. He does when he can get work. He goes to school.

Q. He is in high school in Kingman?

A. Yes.

Q. You stated there were two daughters and three sons, am I correct in that, that live in King-

(Testimony of Amanda Ferguson.)

man, too? I may be wrong, I may be misquoting it. I thought that is what you said?

A. Two married sons and the boy that is at home.

Q. And two daughters?

A. Two daughters, yes.

Q. The rest of your children live out of Kingman? A. Yes.

Q. Now, you stated that you had never done any type of work besides being a cook, and you had been a cook five years previous to the accident?

A. Yes.

Q. Had you ever cooked any place else?

A. Yes, I did a little while.

Q. Had you worked much before the five years?

A. About a year.

Q. Besides taking care of your children? [16]

A. No, I never did.

Q. That was the first time you ever did any work for somebody else? A. Yes.

Q. How large is the restaurant where you work? Was it a big one, does it seat a lot of people? It doesn't have to be exact.

A. I should know, but I can't remember just exactly.

Q. I didn't know whether it was a small one that you walked into or whether it had——

A. No, it is quite a nice cafe.

Q. Has quite a few tables in it?

A. Yes, about twenty chairs I believe at the counter.

(Testimony of Amanda Ferguson.)

Q. There are other people at work in the restaurant? A. Yes.

Q. Behind the counter besides you. Do you have assistant cooks? A. Yes.

Q. Does your daughter work there?

A. Yes.

Q. You stated you had done that for five years, I believe? A. Yes.

Q. When you went back to work it was a week after the accident, and how long did you work then? A. I worked about four weeks. [17]

Q. About four weeks? A. Yes.

Q. It was after that you quit and haven't returned? A. Yes.

Q. I believe you stated you were paid \$66.00 a week, is that correct? A. Yes.

Q. Was that your take home pay?

Mr. Kaplan: If your Honor please, I object to that as immaterial.

Miss Reimann: Your Honor, I have to claim surprise. They list the amount as \$60.00 in the complaint.

Mr. Kaplan: I appreciate that, your Honor, and there is a good explanation for it which Miss Reimann will get if she inquires sufficiently on cross-examination, but the question asked her was what her take home pay was. I don't think that is material. The question is what was she earning?

The Court: That is correct. However, I take it counsel is trying to get at an explanation for the difference.

(Testimony of Amanda Ferguson.)

Mr. Kaplan: I have no objection if she wants to ask that question.

Q. (By Miss Reimann): You stated you got \$66.00 a week. Now, was that all salary that was paid to you or how did you arrive at the \$66.00 a week? Did you get \$66.00 in cash?

A. I believe a dollar a day of that was for meals. [18]

Q. Was for meals? A. Yes.

Q. Actually the amount paid to you was \$60.00, is that correct? A. Yes.

Q. Now, at the time of the accident you stated that Dr. Arnold treated you in the hospital?

A. Yes.

Q. And you had gone to him before the accident on various occasions, is that correct?

A. I had a few times.

Q. And he treated you while you were in the hospital the first time after that and then he is the doctor that put you back in the hospital again?

A. Yes.

Q. Isn't it true that you went to him some after that? The last time you went to Dr. Arnold wasn't it March 26th, 1956?

A. The last time I went to Dr. Arnold was to get a report.

Q. And do you recall that was March 26th or in March, 1956? A. I can't recall exactly.

Q. At that time did he take your blood pressure? A. He did. [19]

(Testimony of Amanda Ferguson.)

Q. At that same time you were going to Dr. Brazie, is that correct? A. Yes.

Q. Previous to the accident, Mrs. Ferguson, you had knowledge that you had had high blood pressure or hypertension, you had been treated for that before? A. I had a little.

Q. You had gone to Dr. Arnold for that, hadn't you? A. No.

Q. At sometime he had taken your blood pressure, do you recall that?

A. I don't know of any time he took my blood pressure except that time, if it was in March the last time I went to him.

Q. You don't recall his taking your blood pressure in March of 1952? A. No.

Q. I believe at that time you were going to him for some gall bladder trouble, do you recall that?

A. I don't recall that.

Q. At that time you don't recall he took your blood pressure? A. No, I don't.

Q. You did know you had high blood pressure prior to the accident? [20] A. Yes.

Q. Who did you go to for treatment for that?

A. Dr. Brazie.

Q. Dr. Brazie. He treated you for high blood pressure prior to the accident?

A. Yes, he did.

Q. Did they ever give you any figure as to what the blood pressure was?

A. Yes. At that time it was 180.

Q. Over what? A. Over——

(Testimony of Amanda Ferguson.)

Q. If you recall. A. 130, I believe.

Q. And you were working at that time?

A. Yes.

Q. And the high blood pressure at that time didn't bother you or keep you from working?

A. No.

Q. You had no signs of dizziness at that time?

A. No.

Q. Now, you stated that Dr. Arnold sent you to Dr. Eisenbeiss? A. Yes.

Q. Did he examine you? A. Yes. [21]

Q. And he sent you then to Dr. Westfall?

A. Yes.

Q. Did Dr. Eisenbeiss recommend you have an electro-encephalograph? A. Yes.

Q. Did you ever have that?

Mr. Kaplan: Do you know what it is, Mrs. Ferguson?

The Witness: I am not sure that I do.

Q. (By Miss Reimann): You don't know whether you had that test run or not then?

A. I had—I can't remember the word.

Q. Did he run the test on you, Dr. Eisenbeiss?

A. I believe that Dr. Westfall did.

Q. Did Dr. Arnold ever advise you against returning to work? A. No.

Q. How much do you weigh now, Mrs. Ferguson? I hate to be personal in this.

A. 170.

Q. And is that about your normal weight, have

(Testimony of Amanda Ferguson.)

you weighed about the same thing for a number of years? A. Yes.

Q. You haven't gained much or lost in the last five or six years?

A. I did lose some when I was feeling so bad.

Q. How much did you weigh prior to the accident? A. About the same.

Q. About 170 pounds? A. Yes.

Q. Do you know how tall you are?

A. Five feet four and three-quarters, I believe.

Q. Now, I believe you stated after you went to the hospital the second time you had some relief after that and you felt a little better, after your second trip to the hospital, is that correct?

A. Yes, I felt a little better.

Q. Have you remained feeling a little better since that time?

A. Well, I have been up and down.

Q. Do you think, Mrs. Ferguson, possibly you returned to work too soon after the accident?

Mr. Kaplan: I object to that as immaterial, if the Court please.

The Court: The objection will be sustained.

Q. (By Miss Reimann): Now, you are able to get around by yourself, you don't have to have any help to do that? A. Yes.

Q. Do you do your housework at home now?

A. Part of it.

Q. Who does the rest of it? [23]

A. My husband.

(Testimony of Amanda Ferguson.)

Q. By housework, do you do your own cooking? A. Yes.

Q. Making of the beds, things like that?

A. I do my cooking and making of the beds, and that is about all.

Q. Do you go downtown by yourself and do your grocery shopping? A. Yes.

Q. Do you walk or do you have a car?

A. We have a car.

Q. Do you drive the car?

A. My daughter usually takes me, one or the other of them.

Q. Do you drive a car yourself?

A. No, ma'am.

Q. Did you used to drive a car?

A. I did.

Q. You don't drive it at all now? A. No.

Q. Have you driven the car since the accident?

A. No.

Q. Never at all? A. No.

Q. But you have walked by yourself downtown, is that right? [24] A. A couple of times.

Q. You stated you worked four weeks after the accident. You went back to work a week after the accident, then you worked for four weeks at that time? A. Yes.

Q. Are you able to read today, the newspaper?

A. Yes.

Q. The first time that you went to Dr. Brazie was in September of '55, is that correct?

A. About then.

(Testimony of Amanda Ferguson.)

Q. That is after you had been down to Phoenix and had been examined by Dr. Westfall and Dr. Eisenbeiss? A. Yes.

Q. Did you ever report back to Dr. Arnold after the examinations were made in Phoenix?

A. Yes, I did.

Q. Then you decided to change doctors?

A. Yes.

Q. Do you notice the dizziness as much as you did before?

A. Not as much. If I get too hot or too tired.

Q. Then you notice it? A. Yes.

Miss Reimann: No further questions. [25]

Redirect Examination

By Mr. Kaplan:

Q. Mrs. Ferguson, what doctor first told you that you had high blood pressure?

A. Dr. Brazie.

Q. And I believe he told you that on an occasion you had to visit his office some, perhaps two years prior to the accident, is that correct?

A. Yes.

Q. Did you go to him for any symptoms or complaints referable to high blood pressure?

A. No. I believe I had the flu, had an attack of flu.

Q. At that time he took your blood pressure?

A. Yes.

Q. And informed you it was a little high?

(Testimony of Amanda Ferguson.)

A. Yes.

Q. And he gave you a prescription for it?

A. Yes.

Q. Did he ever ask you to return for further treatments for that condition?

A. I can't recall just how many, how long he treated me, not very long.

Q. Was it very long?

A. Not very long.

Q. In other words, it was temporary treatment and then [26] you went about your business?

A. Yes.

Q. You continued——

Miss Reimann: Now, I have let these leading questions go on and on. I believe they are getting a little too much. I realize the situation, but I am going to object to the leading questions at this time.

The Court: Don't lead the witness.

Q. (By Mr. Kaplan): In any event, Mrs. Ferguson, had you ever at any time felt of such condition that you were not able to continue with your employment or not able to work prior to the accident?

A. No.

Q. Except for the minor colds and so forth?

A. No.

Q. With regard to housework, prior to the accident, will you tell the Court what you did with regard to household duties?

A. I did the most of my housework and cooking and so forth.

Q. And now, as you previously testified, the only

(Testimony of Amanda Ferguson.)

thing you do is cooking and making the beds?

A. Yes, the light work.

Q. Everything else your husband does?

A. Yes.

Mr. Kaplan: No further questions. [27]

Miss Reimann: No further questions.

The Court: What did you say your age was, Mrs. Ferguson?

The Witness: Fifty-five.

The Court: That is all.

(Witness excused.)

CLARA OSTERMAN

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kaplan:

Q. Will you please state your full name?

A. Clara Osterman.

Q. Where do you live, Mrs. Osterman?

A. Kingman, Arizona.

Q. What is your occupation?

A. Cafe operator.

Q. What is the name of your cafe?

A. Casa Linda Cafe.

Q. Have you had occasion to employ at your cafe Mrs. Amanda Ferguson, the plaintiff in this action?

A. Yes, I do.

Q. When did Mrs. Ferguson first go to work for you, if [28] you recall?

A. In 1950.

(Testimony of Clara Osterman.)

Q. Do you recall the occasion of Mrs. Ferguson being involved in an accident on June 24, 1955?

A. Yes, I do.

Q. Had Mrs. Ferguson continued to work for you from 1950 to the time of the accident?

A. That is right.

Q. Will you please tell the Court what Mrs. Ferguson's duties were?

A. She was a fry cook in the beginning for about two years, then she was a dinner cook.

Q. Will you tell the Court what her duties required her to do?

A. On fry cooking it was afternoon, 1:30 to 9:30. She took the short order work and practically she was by herself outside the salad girl in the winter time. Winter time she did it all by herself. Then when she went on mornings as a dinner cook she prepared the dinner, cooked some breakfast and made the pies and also checked the groceries and gave me the list of what was needed.

Q. How did you find her work to be?

A. Very satisfactory.

Q. Mrs. Osterman, there has been some question here about the size of your cafe. Will you tell the Court what size it [29] is or how many people it holds?

A. Sixty-two. I have twelve tables and fourteen stool counter.

Q. Were Mrs. Ferguson's duties such that required here to be in good health? A. Yes.

Q. During that five year period or almost five

(Testimony of Clara Osterman.)

years that she worked for you had Mrs. Ferguson ever missed time from work because of illness?

A. I think in '54 and '55; she was off four days in '54 and '55 she was off a week. I think she would have been able to come back a couple of days earlier but she had a vacation coming up and she asked if I would allow that time on a one week's vacation and then she took one week later on.

Q. How about by reason of illness?

A. This is in January and she had a cold, she had the flu.

Q. Mrs. Osterman, how much was Mrs. Ferguson earning?

A. Sixty dollars a week with a six dollar board allowance.

Q. Sixty dollars a week plus six dollars board allowance?

A. That is right, six day week.

Q. Actually the salary amounted to sixty dollars a week?

A. That is right.

Q. Mrs. Osterman, after Mrs. Ferguson was involved in this accident she attempted to go back to work for you, is that correct? [30]

A. That is right. —

Q. Will you tell the Court what you noticed about Mrs. Ferguson's condition at that time when she tried to return to work as compared to her condition prior to the accident?

A. She wasn't up to par. She didn't do her work as fast. Her daughter worked with her to bring up the breakfast and did a lot of her dinner work. I asked her a couple of times how she felt and she

(Testimony of Clara Osterman.)

said, "All right, I guess. I think I will be all right in a day or two." She is not a woman to complain.

Q. In other words, she tried her best to keep up with her duties as a cook? A. That is right.

Q. So far as you could tell did she want you to go back to work and continue with her work?

A. Yes, she did. She tried awfully hard in those last four weeks. I wouldn't have been able to keep her if I didn't have her daughter there to pick up for her.

Q. Mrs. Osterman, specifically did you notice Mrs. Ferguson's condition with regard to her memory after the accident, as compared with what it was before? A. Yes, I did.

Q. Will you tell the Court the difference?

A. It wasn't as good as—as I stated before, she was slow in her work, her work wasn't as far advanced when lunch [31] time came, she was a little bit behind. I noticed also I had to help her and in keeping up the supplies for the restaurant.

Q. If Mrs. Ferguson were well and able to return to work——

A. I would like to have her very much.

Mr. Kaplan: No further questions.

Cross-Examination

By Miss Reimann:

Q. From the time that she returned to work for you, which I believe was in July of '55?

A. Yes.

(Testimony of Clara Osterman.)

Q. And you have observed her on the street and all since that time?

A. Yes. She has been down to my place several times. I have seen her on the street I think maybe once or twice; it happened she was never up there when I was there.

Q. Since that time until now can you see any improvement in Mrs. Ferguson from the time she worked for you when she came back in July of '55?

A. I think so.

Q. She appears better to you today than she did then?

A. Right away, yes, right after the accident.

Q. She is better now than when she returned to work for you in July of '55?

A. I haven't seen her very much to talk to her, I haven't [32] been around her too much. I couldn't say too much for that.

Q. How does she appear to you?

A. I think she appears somewhat better.

Miss Reimann: No further questions.

Mr. Kaplan: May this witness be excused, your Honor?

The Court: You may be excused.

(Witness excused.)

(Recess.)

ESTELLE HOPKINS

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kaplan:

Q. Will you please state your full name?

A. Estelle C. Hopkins.

Q. Where do you live, Mrs. Hopkins?

A. Kingman, Arizona.

Q. Are you related to Mrs. Amanda Ferguson, the plaintiff in this action?

A. I am her daughter.

Q. Were you the daughter that was with Mrs. Ferguson at the time this accident occurred?

A. I am. [33]

Q. I believe you heard your mother testify as to how the accident happened. Is that your recollection of it also?

A. Yes, it is.

Q. In other words, you were both sitting in the parked car when the truck hit?

A. We had just got in.

Q. Mrs. Hopkins, is your mother's family, that is your children and she and your father a close family?

A. Yes.

Q. Do you have occasion to see each other often?

A. Every day.

Q. And have you had occasion to see each other that often for a long period of time?

A. Yes.

Q. Can you tell the Court what injuries your mother received in the accident, as best you recall?

(Testimony of Estelle Hopkins.)

A. Well, she was hit on the head and she was bruised, her knees was bruised and her back hurt her.

Q. Mrs. Hopkins, have you had occasion to compare your mother's health and general physical condition after the accident with that before the accident? A. Yes, I have.

Q. Will you please tell the Court in your own words just what you have observed about your mother's condition since the accident as compared with what it was before? [34]

A. She is very nervous now and she wasn't. And her headaches, and even now she will tell me something, I will be at the house in the morning and she will tell me something about some news; and I will go that evening again and she will tell me the same news as if she hadn't told it.

Q. Her memory seems to be faulty?

A. That is right.

Q. How was her memory before the accident?

A. Very sharp.

Q. Go ahead, Mrs. Hopkins.

A. Well, she doesn't seem to be able to do the things she did. She gets tired, she has to sleep a lot and before she didn't.

Q. How is she around the grandchildren?

A. Pretty nervous. We try not to take many around, but when they are around she can't take it.

Q. Was she ever that way before the accident?

A. No, she wasn't.

(Testimony of Estelle Hopkins.)

Q. These symptoms which you have described, are they still noticeable even today?

A. Yes. For quite awhile after the accident she had a time getting her directions correct. She had lost her sense of direction. She would intend to go to the back part of the house but would go to the front part sometimes, lose her way.

Q. Has that seemed to improve? [35]

A. It has improved, yes it has.

Mr. Kaplan: No further questions.

Cross-Examination

By Miss Reimann:

Q. You would say your mother has improved since the accident? A. Because——

Q. Just answer yes or no. A. Yes.

Q. The nervousness and headaches and all, they are some improved since the accident?

A. A little.

Q. How many children do you have?

A. Ten.

Q. You have ten? And when you go over there do you take all ten children? A. No, I don't.

Q. Did you know your mother had high blood pressure prior to the accident?

A. She never complains.

Q. Did you know whether she did or not?

A. At one time she said she did.

Q. Do you know when that was?

A. Quite a few years back I think. [36]

(Testimony of Estelle Hopkins.)

Q. She told you at that time she had high blood pressure?

A. She said Dr. Brazie said she had high blood pressure.

Q. She was being treated for it at that time?

A. I guess.

Q. Have you worked with her all five years in the cafe?

A. It is my other sister that works.

Q. With ten children I guess I should have guessed that one. You have lived in Kingman for quite a few years yourself?

A. For twelve years.

Q. Now, when the accident occurred was she ever unconscious? A. No.

Q. She was conscious all the time?

A. Yes.

Q. And I believe she testified she had a cut above the eye? A. Yes.

Q. Were you with her when they took her to the hospital?

A. I had to stay with the wreck.

Q. Did you take her home from the hospital afterwards, do you recall?

A. I think it was my sister.

Q. How did she appear when she got out of the hospital?

A. She was very nervous, very wrought up.

Q. When she went back to work the first time, the only time actually after the accident, did you see

(Testimony of Estelle Hopkins.)

her at that time, [37] did she appear nervous and all at that time?

A. She concentrated on just her work because she couldn't do anything else.

Q. When she returned to work did she appear pretty upset and nervous when she returned?

A. Yes, she did. She seemed not herself.

Q. But she went back to work anyway?

A. Yes, she did.

Q. And as far as your mother's appearance, her outward appearance, is it about the same as it was before the accident?

A. Outward she is a very calm person.

Q. She looks today about the same as she did before the accident?

A. I don't think she does.

Q. She is about the same weight, is that correct?

A. Yes, maybe the same weight.

Q. She had the gray hair before the accident?

A. Yes.

Miss Reimann: No further questions.

Redirect Examination

By Mr. Kaplan:

Q. Is your mother in at least as good health now as she was before the accident?

A. No, she isn't. [38]

Mr. Kaplan: No further questions.

Miss Reimann: That is all.

WALTER BRAZIE, M.D.

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kaplan:

Q. Will you state your full name?

A. Walter Brazie.

Q. Where do you live, sir?

A. Kingman, Arizona.

Q. What is your profession?

A. Physician.

Q. Are you duly licensed to practice medicine in the State of Arizona? A. I am.

Q. For how long have you practiced medicine in Arizona? A. Thirty-one years.

Q. For how long have you practiced?

A. Thirty-one years.

Q. Started your practice there?

A. That is right.

Q. Dr. Brazie, will you please relate to the Court what [39] your qualifications are as a physician, informing the Court of where you went to school and what hospitals you interned in, and so forth?

A. I graduated from the University of Nebraska and interned at Emanuel Hospital in Omaha and practiced medicine at Ft. Mohave, Arizona; Oatman, Arizona, and Kingman, Arizona; been in Kingman since 1928.

Q. Doctor, have you had occasion to treat Mrs.

(Testimony of Walter Brazie, M.D.)

Amanda Ferguson? A. I have.

Q. I think, Doctor, you have been her family physician for some years?

A. About eight years I remember.

Q. Do you recall offhand when it was that you first had occasion to see Mrs. Ferguson?

A. About 1951.

Q. And have you had occasion to see her intermittently ever since that time?

A. I have, oh, maybe once a year average. Two or three times she has had colds, flu, and things of that kind.

Q. You are aware of course, Doctor, Mrs. Ferguson was involved in an automobile accident June 24, 1955?

A. I got that history from her, yes.

Q. Prior to that accident, Doctor, had Mrs. Ferguson ever consulted you by reason of symptoms which you would [40] relate to high blood pressure?

A. We found she had high blood pressure on one of her visits when she complained she had the flu, I think it was, and was under par and couldn't get over it as far as she thought she should. And we took her blood pressure and found it was elevated at that time.

Q. She hadn't consulted you for that?

A. No, that wasn't what she came in for, that was a kind of side issue.

Q. Having discovered this high blood pressure, Doctor, do you recall what you did for her to reduce it?

(Testimony of Walter Brazie, M.D.)

A. We gave her the usual medication for hypertension and she returned, I think, three times for re-checks. My records show we didn't make much impression up on the hypertension.

Q. Why was that, Doctor?

A. Some of them are slower to respond than others. I think it was a period of about two months she had returned; sometimes you don't get results in two months. Then I didn't see any more of her for sometime.

Q. Doctor, that one occasion you had to treat Mrs. Ferguson for high blood pressure when you happened to discover it at that time in your office, can you tell the Court whether or not her hypertension was anyway disabling at that time?

A. No, it wasn't. [41]

Q. In other words, Doctor, she was able to continue with her normal daily activities?

A. Yes.

Q. Doctor, during all this time you have seen Mrs. Ferguson, will you describe to the Court what type woman she is with regard to complaining or relating symptoms or things of that nature?

A. She is very quiet, easy going type woman, and you have to sort of pull information out of her. She didn't volunteer very much. She certainly doesn't complain and she didn't seem to be particularly concerned about this hypertension. She wasn't as concerned about it as I was when we found it. She evidently figured she had gotten along pretty well with it and felt all right and it didn't

(Testimony of Walter Brazie, M.D.)

seem to worry her a great deal. But the times I have seen her for any illnesses they have been rather acute illnesses and she has been pretty sick and she didn't stay off work any longer than she had to and always wanted to get back a little too soon.

Q. As you say, Doctor, this hypertension she had was not disabling? A. It was not.

Q. That very frequently is the case of people who have hypertension, is it not?

A. Oh, yes. There are lots of people running around with hypertension doing some of the big jobs being done today. [42]

Q. Doctor, specifically calling your attention to September 26th, 1955, I believe that was the day upon which Mrs. Ferguson first consulted you with regard to the symptoms she was having as a result of this accident, is that right?

A. That is right.

Q. Will you tell the Court what her subjective symptoms were at that time?

A. She came in and told me about this accident that she had and the symptoms that she was complaining of were simply a continuation of what she had ever since the accident.

Q. What were they, Doctor?

A. She had headaches, dizziness, blurring of vision and loss of memory.

Q. How about weakness?

A. And general weakness, that is right.

Q. On that occasion, September 26th, 1955, did

(Testimony of Walter Brazie, M.D.)

you take her blood pressure? A. I did.

Q. What did you find it to be at that time?

A. I found it to be elevated higher than it was when I had seen her in 1951, or had last taken her blood pressure.

Q. Would you say that was a sharp elevation?

A. Yes, it was some eighty points in systolic pressure.

Q. Doctor, have you continued to see Mrs. Ferguson since September 26th, 1955? [43]

A. Yes, I have seen her at rather regular intervals, approximately every two weeks.

Q. Do you recall when you last had occasion to see her? A. I saw her the 3rd of July.

Q. Do you recall what her blood pressure was at that time?

A. If I can refer to my notes here. 180 over 130.

Q. What would you say normal blood pressure is for a woman her age?

A. There is a wide variation of normal.

Q. What would you consider within normal limits, let me put it that way?

A. From the clinical standpoint, my own personal feeling in the matter, I always consider anything over 150 is some elevation.

Q. 150 systolic?

A. Systolic, that is right. And from there on up there is a lot of variation. A lot of people have 160 and 70 and get along very nicely, 180 even.

Q. What was her diastolic pressure?

(Testimony of Walter Brazie, M.D.)

A. Diastolic pressure was 130. Her diastolic has always run very high. In fact, in the dangerous category. She has always had a relatively high diastolic pressure.

Q. Doctor, have you tried to reduce Mrs. Ferguson's blood pressure in all this time? [44]

A. Yes, we have.

Q. What have you done in that regard?

A. We have tried all the ordinary hypertensive drugs. We have shifted from one to the other and combinations. We have made some little impression on it, which has been variable.

Q. Have you ever succeeded in reducing her blood pressure to within normal limits?

A. Not normal, no.

Q. Doctor, based upon the history as you know it to be, and as reported to you by Mrs. Ferguson, and based upon your examination and continued examinations of Mrs. Ferguson to the present time, do you have an opinion as to whether or not the accident of June 24th, together with the injuries which Mrs. Ferguson received in that accident, aggravated her pre-existing hypertension and brought about the symptoms which occurred following the accident and which have persisted to the present time?

A. I think that is correct, yes.

Q. Do you have an opinion in that regard, Doctor?

A. I do.

Q. What is your opinion?

A. Just as you have stated it, I think the result

(Testimony of Walter Brazie, M.D.)

is as a result of this accident and from that time, that is timing it from that time, and presumably it was a result of the [45] accident. Of course, we can't guarantee that, because anybody that has a hypertension is always in potential trouble, but coming on definitely right at that time and the complaints and symptoms all being so definite and so persistent, I feel that they certainly had, the symptoms of which she complains and from which she obviously suffers definitely began at that time.

Q. Are those symptoms disabling, Doctor?

A. And they are disabling.

Q. In your opinion, Doctor, will Mrs. Ferguson ever again be able to return to a gainful occupation?

A. I do not think so.

Mr. Kaplan: You may cross-examine.

Cross-Examination

By Miss Reimann:

Q. You stated, Doctor, that you were never able to bring her blood pressure down to within normal limits. The first time you examined her, which was before the accident, her blood pressure was not within normal limits at that time?

A. That is right, it was not.

Q. She is a person that has lived all her life with a higher blood pressure?

A. I wouldn't say all of her life. She has lived a long time. [46]

Q. That didn't affect her at that time?

(Testimony of Walter Brazie, M.D.)

A. No. She seemingly did very well.

Q. And actually since the time of the accident at times her blood pressure has been lower than it was when you took it previous to the accident, isn't that correct?

A. That is right, under intensive treatment and with some of these newer drugs we didn't have five years ago.

Q. It has been lower than it was prior to the accident?

A. That is right. It didn't stay down, but it has been at times.

Q. The last blood pressure you took, which I believe you said was on last Tuesday? A. Yes.

Q. Was 180 over 130? A. That is right.

Q. Wasn't that about the same as it was when you took it prior to the accident?

A. That is right. That is right, practically the same. In fact, one reading we have on May 19, 1951, is 180 over 130.

Q. Now, in March of this year you took her blood pressure, isn't that correct?

A. March of this year?

Q. Yes. A. 1956, yes.

Q. What was her blood pressure then? [47]

A. 165 over 120.

Q. Actually then it was a little lower than it is now? A. Yes.

Q. When you take a blood pressure, Doctor, when you take somebody's blood pressure, do the

(Testimony of Walter Brazie, M.D.)

circumstances that surround it at that time make a difference in what the reading might be?

A. With a great many people it does.

Q. I wonder if you would explain that a little?

A. Well, hypertension is one of the main factors and the cause of hypertension comes through the nervous system, causing a spasm of the blood vessels which makes the blood vessels smaller and the blood pressure comes up. So we always take that into consideration when we take a blood pressure and usually take more than one reading. In other words, I personally never pay any attention to the first reading. We take it and let it down, take it two or three times and while we are doing that we usually try to engage them in conversation.

Q. Keep them as calm as possible?

A. That is right, keep their mind off this. So we can get it fairly accurate in lots of them. In the case of Mrs. Ferguson though I never felt that was an important factor, her temperament being what it is it did not seem to make any difference, that [48] part.

Q. Prior to the accident did you feel that Mrs. Ferguson was on a normal plane or did you have a feeling that possibly she was going down hill prior to the accident, when you first treated her?

A. No. The only time I saw her was, say, occasionally from time to time with acute illnesses; and her only concern was to get over her acute illness and get back to work, which she did. Since I

(Testimony of Walter Brazie, M.D.)

have seen her, since last September, there is a definite change in what, as I knew her before.

Q. Before when you treated her for high blood pressure she weighed about what she does today, is that correct?

A. I don't have it down here offhand what the weight is, but I would say, seeing her, it is practically the same. She doesn't look much different physically.

Q. Did you recommend at that time she lose some weight? A. We always recommend that.

Q. Actually weight has a great deal to do with high blood pressure, doesn't it?

A. Oftentimes a factor with many of them.

Q. This high blood pressure to start with sometime ago might have been caused in part by the excessive weight of Mrs. Ferguson?

A. I wouldn't say caused by, but they tend to run together oftentimes. It could be a factor.

Q. Isn't it true when you reduce the weight the blood [49] pressure very often reduces?

A. In many cases it comes down.

Q. Mrs. Ferguson hasn't lost any weight?

A. Not a great amount of weight. She has made valiant attempts, like many of those people do.

Q. When you reduce the weight and you have high blood pressure, say, there is quite a drop right at first? As you lose the weight, say lost five or ten pounds all at once, then your blood pressure drops very rapidly?

A. There is no correlation whatsoever in any

(Testimony of Walter Brazie, M.D.)

individual case. You hope there will be, but it doesn't always work out that way.

Q. That is the normal?

A. I wouldn't say normal.

Q. That when you lost weight it doesn't affect the blood pressure?

A. In many cases it has no effect whatsoever.

Q. You wouldn't even say that is normal?

A. I wouldn't say that I expect every time a patient loses weight that the blood pressure will go down.

Q. You would say that anytime a patient comes in to you and is overweight and has high blood pressure that you would certainly recommend——

A. I would assume it is a factor until proven otherwise.

Q. And you so recommended in the case of Mrs. Ferguson [50] prior to the accident?

A. Yes.

Q. And since the accident, too?

A. Yes, most emphatically.

Q. Have you provided her with any diets?

A. Oh, yes. We encourage them all we can.

Q. Now, since you have started treating Mrs. Ferguson, which I believe was three months after the accident on September 26th, 1955, when was the last time you saw her prior to that?

A. I saw her January 18th, 1955; January 14, 15, and 18. That was a very persistent cold that hung on and hung on.

Q. You didn't see her for a period of——

(Testimony of Walter Brazie, M.D.)

A. Until September 26th, 1955.

Q. And at that time what type examination did you give her when she came in to you, on September 26th, 1955?

A. We checked her blood pressure and the nervous reflexes, the usual ones, to see if there was any paralysis, indication of any paralysis.

Q. Was there any indication of any?

A. I could find none.

Q. Did you run any lab tests?

A. I did not.

Q. No blood tests of any kind?

A. No. [51]

Q. No sugar tests of the urine?

A. Yes, we ran an albumin sugar.

Q. What was that? A. Negative.

Q. Are there any, outside of the hypertension, are there any objective things you can find that are actually wrong with Mrs. Ferguson?

A. The impression I get is this, from the physical standpoint—you are talking about objective symptoms?

Q. That is right.

A. Her reactions are not as fast, are not as quick as they were before. She is a little more sluggish and slow moving. That is the obvious thing I noticed.

Q. Would anybody with a high blood pressure that she had and having had twelve children and worked five years as a cook, wouldn't it be rather usual a person would begin to slow down a little?

(Testimony of Walter Brazie, M.D.)

A. Yes. Just when that slowing process—with some people it is gradual, some people more rapid. But she gives the typical appearance of a person that has had what we call a little stroke, in which these things come on rather suddenly.

Q. Are there any symptoms or evidence she had such? A. From the history I got from her.

Q. From your examination, not from her history?

A. All right. As far as the neurological examination [52] is concerned, no. But these little strokes, you must depend on your clinical history and symptoms rather than the objective.

Q. Actually, most of the basis of your opinion you have given today is based on the history she has given you rather than any tests of your observation you have performed yourself?

A. The history she has given me plus my knowing this patient before.

Q. I believe you say you saw her on the average of once a year? A. Yes.

Q. Would seeing a patient on the average of once a year, would you have a very general idea actually of that patient's health, when you only treated her for colds?

A. Yes. In a small town where we see members of the family and they come in with other members of the family, we get to know our patients rather well.

Q. Mainly by chatting with the family, what they tell you?

(Testimony of Walter Brazie, M.D.)

A. You bet, we get a lot of information from the family.

Q. What other tests did you run? What other type tests did you run?

A. That is it, blood pressure, urinalysis, as far as lab, that is the extent of it.

Q. Did you get any reports from any other doctors? A. I did not. [53]

Q. Dr. Westfall didn't send a report to you?

A. No.

Q. Did Dr. Eisenbeiss? A. No.

Q. None of those reports? A. No.

Q. Do you know she had gone down there?

A. She told me she had gone to Phoenix for an examination.

Q. Did you know she had gone to Dr. Arnold, or was going to Dr. Arnold at the same time she was going to you?

A. I knew she had been to him. I knew he took care of her at the time of the accident.

Q. Did you ever discuss this case with Dr. Arnold, as far as the accident is concerned, and his treatment and what he might have prescribed?

A. I have never discussed it.

Q. You say there is some improvement since you started treating her?

A. Yes, there is some little improvement in her general condition.

Q. Actually, back to this weight process, if a person loses weight and, say, that it helps—just

(Testimony of Walter Brazie, M.D.)

assume for the moment it does help and helps reduce the blood pressure—doesn't that also help such things as dizziness and nervousness?

A. To the extent they are the result of [54] hypertension and hypertension comes down.

Q. Do you think the dizziness and nervousness in Mrs. Ferguson's case is the result of the hypertension?

A. All those things you get as a result of hypertension.

Q. At the time you first examined Mrs. Ferguson after the accident, which was three months, was there any evidence at that time at all to you of any physical damage that you could see?

A. None.

Q. None whatsoever? A. No.

Q. Do you feel with the hypertension Mrs. Ferguson had prior to the accident that she could have broken down at any time?

A. It is possible.

Q. From the opinion that you have reached in this case do you base it mainly on the history she gave you, your examination, or just what?

A. The history that she gave me, my observation of the patient both before and after the accident. It is based on all of it.

Q. Now, you said that you had the opinion that Mrs. Ferguson could not return as a cook, is that correct, to gainful employment?

A. That is right. In fact, I insisted when she

(Testimony of Walter Brazie, M.D.)

first [55] came to me, she was still planning to go back to work and was anxious to go back to work. That was one of my first jobs was to impress upon her that she should forget about it.

Q. Do you feel she could do light housework?

A. I think so.

Q. Do you feel she could do baby sitting?

A. Up to a point, depending a great deal on the baby and her reaction to the children. Sometimes older folks can do that well and sometimes it bothers them a great deal. From the physical standpoint she could.

Q. From a mental standpoint?

A. From the nervousness, hypertension that oftentimes goes with that.

Q. With what?

A. Baby sitting, if you ever sat with a baby.

Q. What do you base the nervousness on, do you take it back to the hypertension?

A. I think she definitely has more tension now than she used to have.

Q. But she doesn't have higher blood pressure than she used to have?

A. I would say essentially that there is no material change, at least there were at times. It has been up and down, but averaging it out there hasn't.

Q. You don't know whether it was up and down prior to [56] the accident or not?

A. Have no way of knowing. The three times she came to me it was practically the same all three times.

(Testimony of Walter Brazie, M.D.)

Q. You didn't treat her after that?

A. For no hypertension, only acute conditions.

Q. I asked you, I believe, where you feel this nervousness is coming from if it isn't coming from the hypertension and you can't find anything else of any objective symptoms that is wrong with Mrs. Ferguson, you feel it is something she has worked up herself?

A. No. I see what you are getting at and I know that is a very important factor in many of these cases. I feel it isn't so much so, put it that way.

Q. Do you think Mrs. Ferguson has been nervous over the prospect of this case?

A. I think there has been some tension connected with it, but I don't think over the period of time I was taking care of her, especially in the first part of it, that was a big factor.

Q. What medicines are you giving today?

A. At the present time, the last time I saw her, and that would be in—let me see—I took her blood pressure last, was May 21st. I took her off of the medication we had and put her on chlor-trimeton, which is not a hypertensive drug primarily, which is an antihistamin. But there has [57] been some work later in which they have gotten some pretty good results on these stubborn hypertensive cases. So I put her on that and the last time I added some rauvera.

Q. Dr. Brazie, when she came to you prior to the accident and she had this high blood pressure why did you just treat her three times and let her

(Testimony of Walter Brazie, M.D.)

go, why didn't you keep working on different medicines to lower her blood pressure?

A. Because the patient did not return for that purpose.

Q. Had you instructed her to?

A. We always instruct them to return at regular intervals, but she wasn't particularly concerned with her hypertension and oftentimes she felt all right, and, as people do, she didn't come back.

Q. But there is no question she had it as high then as she does now? A. Definitely.

Q. You do feel there is some improvement in the nervousness?

A. Yes, in every respect she is better than she was in September when I first saw her.

Q. There isn't as much dizziness now, is there?

A. I think all her symptoms have improved a little.

Q. I think she complained prior that she had trouble in seeing and maybe saw double and now she is able to read?

A. All those symptoms have improved.

Q. Is there any reason, Doctor, why they won't continue [58] to improve?

A. I have the feeling they have about reached the stationary point.

Q. Why do you feel that way? She has been improving right along, hasn't she?

A. Nervous tissue is a little slower to repair.

Q. Has there been any actual damage to the ner-

(Testimony of Walter Brazie, M.D.)

vous tissue? A. I feel there has been, yes.

Q. You don't know? I mean no tests have been run?

A. That is right. It would take an autopsy to prove it.

Q. Aren't there tests that can be given?

A. There is no tests to tell, at least that I have.

Q. There are tests available elsewhere?

A. Oh, they could tell you in a rough sort of way. You couldn't guarantee the results.

Q. Have you ever recommended that Mrs. Ferguson go to another doctor, a specialist in the nerves? A. I have not.

Q. You don't feel that would be——

A. I didn't feel she would gain anything by it.

Q. What are the main causes of hypertension?

A. We have what we call a neurogenic background, which is the basis for a very very large percentage of them, the sympathetic nervous system, in some way it is unbalanced and causes spasms of the blood vessels, causes the pressure to go [59] up. That is one of the big factors.

Q. Have you been able to determine in Mrs. Ferguson's case what the case is or was?

A. No. Just as many of these women and a large per cent of them when they go through the menopause, say forty-five on, the nervous system seems to be thrown out of balance and many of them have their origin at that time. I would presume at the time she came she was about fifty years

(Testimony of Walter Brazie, M.D.)

old, when I first saw her, and probably that very possibly could have been the factor.

Q. What was the first date you took her blood pressure? A. April 23rd, 1951.

Q. In 1951. At that time it was 180 over 130?

A. 180 over 140.

Q. Over 140.

A. It came down to 180 over 130.

Q. The last time you took it?

A. The last time, in May, 1951.

Q. And you feel that this accident, even though she had that high blood pressure before and had twelve children and living as she was, the accident, even though the blood pressure is the same, has caused the rest of it?

A. I think it is a precipitating factor, yes.

Q. What are the other factors?

A. Anyone with that high a blood pressure there is always [60] a possibility of cerebral hemorrhage, so-called apoplexy.

Q. That could have happened at any time?

A. That could have happened at any time.

Q. It could happen at any time now?

A. That is right. So there is that factor to consider. But from the history and the observation and all I get the feeling that at that time—this is in my personal hunch, I can't prove it——

Q. This is a hunch?

A. It is my personal opinion, put it that way, a better word, that I think she had what we call a little stroke at or shortly after. I think the accident,

(Testimony of Walter Brazie, M.D.)

naturally her blood pressure went up, it would with any person, and it went up terrifically and probably stayed up for awhile. And during that time she had a little, what we call a little stroke, didn't produce paralysis, you understand, but your physical symptoms and digestive symptoms and——

Q. You think that was right after the accident?

A. From her history I got it this time when I took her history, the first time I saw her, I got it from her that about a week after the accident——

Q. When she went back to work?

A. I didn't tie it in with the work, but roughly about a week after the accident that she had a rather acute episode of headaches, severe headaches, much worse than she had, severe [61] headaches and visual disturbances and dizziness. It was a rather acute episode.

Q. That is what she told you?

A. That is what she told me.

Q. At that time she was a patient of Dr. Arnold's, is that correct?

A. Yes, she would have to be, yes.

Q. Now, have you ever examined the records of the hospital when she was in there?

A. I have not.

Q. You have never seen them? A. No.

Q. You don't know actually what treatment she was given or anything about that?

A. I know nothing about it.

Miss Reinmann: No further questions.

(Testimony of Walter Brazie, M.D.)

Redirect Examination

By Mr. Kaplan:

Q. Dr. Brazie, Miss Reimann has brought forth from you testimony to the effect that it is possible that Mrs. Ferguson could have broken down, so to speak, if I can reduce it to the common vernacular, at any time because of this pre-existing hypertension, is that true? A. That is right. [62]

Q. It is also possible, is it not, Doctor, that she could have continued to live her normal life expectancy—— A. That is possible.

Q. ——and died of natural causes other than the hypertension? A. That is possible.

Q. As a matter of fact, we know that she was involved in an accident and as a matter of your own personal observation of Mrs. Ferguson, you have noticed a definite change since the accident from before? A. I have.

Q. And are all of the symptoms which Mrs. Ferguson had and related to you and symptoms which still persist today, are they compatible with the objective findings and your observation?

A. That is right.

Q. Have you any reason to believe her symptoms have been in any way exaggerated or falsified?

A. I do not. Quite the contrary. I think this particular woman would be less so. I know that occurs in lots of people; I don't think that has any bearing at all in this case.

(Testimony of Walter Brazie, M.D.)

Q. In your qualified medical opinion those symptoms were brought about by this accident?

A. The condition which——

Q. She is now in? [63]

A. ——the condition which produces these symptoms I think was brought about or we will say——

Q. Was precipitated?

A. ——was precipitated——

Miss Reimann: Let the doctor answer.

The Witness: ——by the accident.

Mr. Kaplan: That is all.

Recross-Examination

By Miss Reimann:

Q. But they could have happened without the accident?

A. Could have happened at any time.

Miss Reimann: That is all.

The Court: Doctor, I think you said in 1951 when you discovered this high blood pressure that one of those factors was dangerously high?

A. The diastolic, that is right. Whenever you get over 100 it is worthy of serious consideration; when you get up to 130 and 140 it is very serious.

Q. You recommended to Mrs. Ferguson she continue treatment with you and medication to control that?

A. Oh, yes. We never discharge a patient with that kind of blood pressure.

(Testimony of Walter Brazie, M.D.)

Q. When she ignored or refused to carry out your instructions did you feel it then probable she would have some [64] dangerous developments from her neglect of that condition?

A. Yes, there is always a possibility of anyone with a pressure of that kind having an accident at any time. Also it isn't always we can reduce them for them either.

Q. What I am getting at, Doctor, you told counsel in answer to a question that it is possible she might have gone on and died entirely of other causes, but what I am getting at, with this dangerously high blood pressure and her neglect of her condition, would you have thought it probable if she continued to do that she would have died of natural causes?

A. No, I think the percentages would be against it.

The Court: That is all.

Redirect Examination

By Mr. Kaplan:

Q. In that connection I take it your reason for so stating is because it was not disabling in any way, it was not producing disabling symptoms at the time before the accident? A. That is right.

Mr. Kaplan: That is all.

The Court: That is all, Doctor.

Mr. Kaplan: May the doctor be excused?

The Court: You may be excused, Doctor.

(Witness excused.)

The Court: We will recess until 1:30. [65]

(Noon recess.)

JOHN FINLEY WESTFALL, M.D.

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Kaplan:

Q. Will you please state your full name?

A. John Finley Westfall.

Q. Where do you live?

A. Phoenix, Arizona.

Q. What is your profession, sir?

A. Physician.

Q. Are you duly licensed to practice medicine in the State of Arizona, Doctor? A. I am.

Q. Are you presently associated with the staff of any clinic?

A. I am, with the Department of Internal Medicine at the Grunow Clinic.

Q. I take it from what you say, Doctor, that you specialize in internal medicine?

A. That is correct.

Q. Will you briefly state to the Court your qualifications [66] to practice internal medicine, also telling the Court where you went to school?

A. I went to school at George Washington University, Washington, D. C., graduated in 1947; had one year internship, three years of residency in internal medicine.

(Testimony of John Finley Westfall, M.D.)

Q. At what hospital?

A. George Washington University Hospital.

Q. Doctor, are you a member of the Board of Internal Medicine, is that the proper name?

A. That is the proper name. No, I am not.

Q. Do you practice in association at the Grunow Clinic with other doctors who specialize in internal medicine?

A. I do.

Q. Of what hospitals are you a staff member in Phoenix?

A. In Phoenix, Good Samaritan Hospital, St. Joseph's Hospital, Memorial Hospital and St. Luke's Hospital.

Q. Dr. Westfall, have you had occasion to examine Mrs. Amanda Ferguson, the plaintiff in this action?

A. I have.

Q. Do you recall when it was you first examined her?

A. I examined Mrs. Ferguson on August 23rd, 1955.

Q. At whose request?

A. At the request of Dr. John Eisenbeiss.

Q. Doctor, will you relate to the Court what history Mrs. Ferguson gave to you at that [67] time?

Miss Reimann: Just a moment. I am going to entertain an objection here if this is past history, if this doctor didn't treat her. I don't know whether he examined her just for the purpose of testifying today or whether there was some treatment, but if

(Testimony of John Finley Westfall, M.D.)

it was for the purpose of testimony, from the previous testimony it does not appear he did treat her——

Mr. Kaplan: Perhaps I should clarify it, your Honor.

Q. (By Mr. Kaplan): What was the purpose of your examination, Doctor?

A. At the time I examined Mrs. Ferguson the only thing I knew about her was that Dr. Eisenbeiss had requested that I see her in medical consultation.

Q. You examined her on August 23rd, 1955?

A. Correct.

Q. Have you examined her since then?

A. I did not.

Q. Did you examine her for the purpose of testifying at this trial? A. I did not.

Q. Did you examine her for the purpose of consultation? A. That is correct.

Q. Did you also prescribe any treatment?

A. I did.

Q. Now, Doctor, will you please tell the Court what history, [68] past history and symptoms Mrs. Ferguson related to you at the time of your examination?

Miss Reimann: Same objection, your Honor.

The Court: He may answer.

A. Mrs. Ferguson, at the time I saw her come in with a chief complaint of weakness, dizziness, headaches over her right side of her head. The primary

(Testimony of John Finley Westfall, M.D.)

reason that she was referred was to clarify the cause of a recent episode she had on the 30th of July in the same year, at which time she in the history revealed she had a rather abrupt onset of nausea, vomiting, visual disturbance, headaches and I presumed almost in a state of collapse.

Q. (By Mr. Kaplan): Doctor, will you tell the Court what you did in the course of your examination other than to obtain this history?

A. Regarding history, I further inquired into her past history, at which time she revealed she had been previously diagnosed as having hypertension and at one time had taken medication for this disease. She further gave a history of surgery in the past.

Q. Did she also give you a history of occupation?

A. She did. She stated that she had been employed prior to an accident on——

Q. June 24th?

A. ——June 24th, 1955, as a cook in a restaurant; that she [69] had not worked since the accident that she had had; that the acute episode I referred to occurred approximately one week after the accident.

Q. Now, Doctor, aside from taking of the patient's history will you relate what you did insofar as your examination is concerned?

A. The complete physical examination was done at the time Mrs. Ferguson was in the office. Do you wish me to relate the findings?

(Testimony of John Finley Westfall, M.D.)

Q. Specifically with regard to her heart and hypertension, Doctor.

A. Her blood pressure on multiple reading, by that, seven to eight readings, varied between 230 and 210 cystolic pressure and 120 to 140 diastolic pressure. That was in both arms. There was evidence of a recent scar over the right forehead. Examination of the heart revealed some degree of enlargement, which was further verified on fluoroscopic examination. The remainder of the examination was found to be essentially normal with the exception that the person, Mrs. Ferguson, did not seem to be as alert or spontaneous as I would expect a person of her age to be.

Q. Doctor, will you please state what treatment you prescribed?

A. I advised Mrs. Ferguson to start on a mild drug for her hypertension, and further advised her at that time that [70] I presumed it would be necessary to add further drugs via her prior physician in Kingman, if they were necessary to control her high blood pressure.

Q. Doctor, is it true that frequently persons who have hypertensive heart disease may live their normal life expectancy and die of other natural causes——

A. That is true.

Q. ——without being functionally disturbed by the hypertension at all?

A. That is quite possible.

Q. In other words, frequently persons who have hypertension nevertheless are able to carry out their

(Testimony of John Finley Westfall, M.D.)

normal daily occupations? A. Yes.

Q. And yet because of the hypertension their heart or nervous system is not sufficient to withstand the stress of a sudden or severe trauma?

A. That is often true.

Q. Doctor, you have been present in the courtroom and have heard the testimony of Mrs. Ferguson, Mrs. Osterman, Mrs. Ferguson's daughter, and Dr. Brazie, have you not?

A. That is correct.

Q. You have learned from that testimony that Mrs. Ferguson was able to continue her occupation as a cook for five years prior to this accident, without being troubled by the [71] hypertension in any way. And you have learned from Dr. Brazie what his examinations have disclosed and what his treatment has been since September of 1955. Based upon that testimony do you have an opinion as to whether or not the accident in which Mrs. Ferguson was involved on June 24, 1955, together with the injuries she sustained in the accident, aggravated her pre-existing hypertension and thereby brought about this sudden episode of loss of memory, disturbed vision, headaches, extreme nervousness?

A. I would say that is quite possible.

Q. Do you have an opinion with regard to whether or not that is the situation?

A. I would say that it is likely that the accident was a precipitating factor in her present condition.

(Testimony of John Finley Westfall, M.D.)

Q. Doctor, do you have an opinion as to whether or not Mrs. Ferguson will ever be able to return to a gainful occupation again?

A. I doubt that she will be able to.

Q. Doctor, there is the possibility that this lady's condition could have resulted in somewhat the same symptoms without an intervening accident is that true? A. That is true.

Q. Will you state why it is, if it is, that you believe that it was the accident which precipitated the onset of her present condition, as distinguished from her pre-existing [72] hypertension?

A. My opinion on that would be based on the fact that Mrs. Ferguson had a symptomatic hypertension over a known period of at least four years at which time her general health was apparently good and allowed her to work every day. I believe that in view of that history, with the sudden turn of events coming on subsequent to the accident, that I would say that the accident was the precipitating factor.

Q. Doctor, would you say that it was probable or that it was merely possible that such a condition would have come about, even though no accident had intervened?

A. Would you repeat that please?

Q. We have acknowledged the possibility that Mrs. Ferguson's present condition might have come about even though no accident had intervened?

A. Yes.

Q. Now, would you say that her present condi-

(Testimony of John Finley Westfall, M.D.)

tion probably would have come about even though no accident had intervened, or would you say it is merely a possibility it might have come about even though no accident intervened?

A. I would say my opinion on that would be that it probably would not have come about had the accident not occurred.

Mr. Kaplan: You may cross-examine. [73]

Cross-Examination

By Miss Reimann:

Q. I believe you stated that Mrs. Ferguson was sent to you by Dr. Eisenbeiss? A. Correct.

Q. And that was on August 23rd, 1955. Did you report your findings back to him? A. I did.

Q. And she was sent to Dr. Eisenbeiss by Dr. Arnold in Kingman, is that correct?

A. That is correct.

Q. Did you ever report your findings to any physician in Kingman?

A. I did. A letter was written to Dr. Arnold at Kingman.

Q. Exactly what were your findings at that time?

A. They were the findings as—I believe I related them to the Court a moment ago. Basically, one of a definite hypertension, evidence of enlargement of the heart. There was some dilation of the aortic arch, that being the major blood vessel com-

(Testimony of John Finley Westfall, M.D.)
ing from your heart. I think that was the highlight of the findings.

Q. Actually what you are saying is that she had hypertension, is that correct? A. Correct.

Q. And at that time you knew she had [74] had hypertension previous to that? A. Correct.

Q. And you have heard today that actually the hypertension at that time was not as high as when you took it, but as high, say, as two days ago when Dr. Brazie took it? A. Yes.

Q. Also at that time did she say to you whether she had any headaches previous to the accident over her eyes?

A. She stated that occasionally she had headaches over her right eye.

Q. Was an electroencephalogram ever given?

A. Not to my knowledge.

Q. Wasn't that recommended by Dr. Eisenbeiss?

A. I really do not know.

Q. When you examined her did she appear to be dizzy at the time?

A. No, she was not dizzy at the time.

Q. Did you check her eyes? A. I did.

Q. What was the condition of her eyes?

A. I checked her eyes on basically what we call an ophthalmoscopic examination, which is primarily to look at the arteries, blood vessels and nerves in back of the eye, which were normal at that time.

Q. You discussed an incident, an acute episode, I believe [75] you described it of July 30th you said?
A. That is correct.

(Testimony of John Finley Westfall, M.D.)

Q. Then later you said that you understood that was a week after the accident; the accident was in June, if I am not correct. I am not trying to confuse you, I am trying to get it straight.

A. Right. I agree.

Q. This episode that she had of July 30th where there was acute nausea and dizziness, I believe that is what she told you? A. Correct.

Q. After that time did you know she had been put in a hospital in Kingman, did she tell you that? I believe she entered around the 1st of August and was under observation at that time by Dr. Arnold.

A. Yes.

Q. This acute episode of July 30th which you have testified to and described the symptoms of it, do you think that episode was a result of the accident?

A. I believe that it likely was a result of the accident.

Q. You don't feel such a thing as you have termed it, "acute", wouldn't have occurred earlier than this—after all, this is over a month after the accident occurred?

A. It is more likely to have occurred earlier. You might say it also can occur at a delayed interval of time. [76]

Q. Has that been your opinion all the time as to that?

A. It has been my opinion that the accident was a factor in the cause of the acute episode.

Q. That it was a cause?

(Testimony of John Finley Westfall, M.D.)

A. That it was a factor.

Q. Now, of course, the fact that she had the hypertension before was also a cause?

A. Correct.

Q. And have you ever made the statement, Doctor, that if the accident of June 24th had caused that illness that the result would have been immediate and not delayed?

A. No, I don't recall having made such a statement.

Q. Now, this treatment that you said you started her on was mild drugs; then you said she might have to have further drugs. You said you sent that to Dr. Arnold.

A. That is correct.

Q. And at that time she was his patient, in August of '55?

A. •Correct.

Q. I believe you stated that it was possible that she might not be able to work again, is that correct?

A. Yes, I did.

Q. You heard the testimony that she has improved. Everybody that testified today said there has been some considerable—some considerable and others slight—improvement in Mrs. [77] Ferguson?

A. Yes.

Q. If that improvement would continue and the blood pressure would level out, say, at least to the same degree that it was prior to the accident, isn't it quite possible she would be able to return to work?

A. She should continue to improve, yes.

Q. Actually, the things wrong with Mrs. Fer-

(Testimony of John Finley Westfall, M.D.)

guson now are all subjective things, there is nothing objective that you can put your finger on, except the high blood pressure, which she had previous to the accident, isn't that correct?

A. I would say that is correct.

Q. It is also quite possible that Mrs. Ferguson, if she decides she wants to and they can level off this blood pressure, can return to work?

A. I would say it is possible but not probable.

Q. Then you are of the opinion the improvement won't continue?

A. I am of the opinion she may notice some further improvement. However, I would tend to doubt her improvement would be to the extent that she would be able to go back to full time work.

Q. Do you think she could do part time work?

A. I really don't know. It is a possibility.

Q. You have only seen her once, this is as a physician? [78]

A. Correct.

Q. At that time you said she showed no dizziness and her eyes were perfectly all right; actually the only real trouble was the hypertension.

A. The only thing we noted on physical examination, except for lack of alertness, which I stated I did not think was normal for a person of her age.

Q. But that has apparently improved some since the time you saw her?

A. I really don't know.

Q. Now, you said that a person that had the

(Testimony of John Finley Westfall, M.D.)

hypertension that she had could possibly live on and die of a normal disease, the normal tendency?

A. Correct.

Q. Isn't it also quite true that a person that has the hypertension like that could die from the hypertension or hypertension of that type at any time?

A. Yes.

Q. Then it would be possible to go either way there? A. Yes.

Q. You don't want to put in any probable?

A. No.

Q. Aren't there a lot of new drugs on the market today to control hypertension?

A. Yes, there are. [79]

Q. They are quite effective?

A. They are.

Q. You don't know actually what her treatment has been at all since you saw her in August of '55?

A. No, I do not.

Q. Isn't it true too, Doctor, that weight enters in quite a bit to hypertension?

A. It can, yes.

Q. Did you advise Mrs. Ferguson when you saw her that it might be helpful to her if she lost some weight?

A. I don't recall specifically if I did advise her or not.

Q. If a person of Mrs. Ferguson's height, weighs 170 pounds, wouldn't you think it would be advisable if she lost some weight?

A. Yes, I do.

(Testimony of John Finley Westfall, M.D.)

Q. And the losing of the weight might have an effect on the blood pressure reading?

A. It might.

Q. Might have a considerable effect, mightn't it?

A. In a case like Mrs. Ferguson's I doubt if weight loss would have a considerable effect on her blood pressure, possibly a minor effect.

Q. You heard she was advised to lose weight back in 1951? A. Correct. [80]

Q. And also was advised to continue the treatment at that time. Back that far when she was working, if she had continued the treatment and lost the weight as she was advised at that time, couldn't it have had considerably effect on Mrs. Ferguson?

A. It could be either way. We have skinny hypertensives and over weight ones. The weight reduction in her type of hypertension I think would have probably resulted in a slight reduction of her blood pressure.

Q. There is no doubt it would have been to her advantage? A. I would agree to that.

Q. Now, as I said, this episode occurred in July, July 30th, 1955, and also you know in between there she had gone back to work. Now, during that time you have no knowledge whether anything else happened to Mrs. Ferguson which could have caused the episode or not, do you? A. No, I do not.

Q. Anybody with the hypertension that she had, that there are many things that could have caused an episode of this type, isn't that correct?

(Testimony of John Finley Westfall, M.D.)

A. That is correct.

Q. And Mrs. Ferguson, as you know, was a woman who had apparently worked very hard and had had twelve children. Isn't it more likely that she would be susceptible to any type of thing, that any different type of the regularity might [81] affect her more than it would, say, a person that had not had twelve children and hadn't worked as hard as she had in her life?

A. I would have to say not necessarily on that.

Q. You still feel that you have never felt that the episode of July 30th would have occurred earlier if it had been caused by the accident?

A. No. I don't recall that. I would say this on that topic, you would expect it to occur at an earlier date but they can occur at a later date.

Q. Did Dr. Arnold in sending the patient to Dr. Eisenbeiss, who sent her to you, refer in any way to the episode of July 30th?

A. I had no history whatsoever available except what Mrs. Ferguson and her daughter related to me.

Miss Reimann: I believe that is all.

Redirect Examination

By Mr. Kaplan:

Q. Doctor, do you have any reason to believe that Mrs. Ferguson's symptoms were in any way exaggerated or falsified? A. I do not.

Q. Are they completely compatible with a person whose pre-existing hypertension was aggravated by an accident? A. They are. [82]

(Testimony of John Finley Westfall, M.D.)

Mr. Kaplan: That is all.

Recross-Examination

By Miss Reimann:

Q. Doctor, do I understand you then that if a person has hypertension and it is aggravated, and yet the hypertension is brought down at least to the same level as it was before the aggravation, that that person cannot become a normal person again and do the things they did before, where there are no other objective symptoms and, I might also add in that, which I think is in evidence, it shows decided improvement in the patient?

A. I say it is possible—I would say it this way: There are many instances where people can and have returned to full activity.

Miss Reimann: No further questions.

Further Redirect Examination

By Mr. Kaplan:

Q. Doctor, in your opinion, is that the case with Mrs. Ferguson?

A. I would tend to doubt it.

Mr. Kaplan: That is all.

Miss Reimann: No further questions.

The Court: Doctor, where did you get the [83] information that this occurrence of July 30th was about a week after the accident?

A. I don't recall. Perhaps that is a misinterpre-

(Testimony of John Finley Westfall, M.D.)

tation on my part, primarily because I have in my record book the date of the accident 6/24/55 and the acute episode occurred 30th of July.

Q. What is there about the accident that would bring about this acute episode?

A. It isn't so much the actual injury, it is in any person who has a basic hypertension of a rather severe nature who is put under any extreme physical, emotional stress or shock like situation will tend to notice an aggravation of their hypertension. In this case I was particularly referring to the episode which occurred on 30 July, which in my opinion was an acute vascular—in other words, blood vessel reaction in her brain which we call acute hypertensive encephalopathy, characterized by a great deal of spasm of the brain, pouring out of fluid into the brain tissue with some brain tissue damage.

Q. Is it the excitement of the shock in the accident that does that?

A. That is right. You wouldn't expect it to happen to a person with normal blood pressure.

Q. If that is what caused it, Doctor, would you look for the episode to happen in close relation to the excitement and [84] shock?

A. It is more likely to occur, we will say, in the first two weeks. Certainly I think you would say your reaction could occur anywhere within sixty days, several months.

The Court: That is all.

(Testimony of John Finley Westfall, M.D.)

Miss Reimann: I have a few more questions, if I may, your Honor.

Further Recross-Examination

By Miss Reimann:

Q. You heard the testimony today that Mrs. Ferguson went back to work a week after she was in the accident? A. Correct.

Q. And she worked for a month, and that during that time that she had a hard time doing the work and she was worried about it because she wasn't doing the work and she was having trouble with her mental processes, thinking, at that time; after that she had to give up the job because at that time she wasn't able to do the work. Isn't it true that something like that was probably a greater upset to Mrs. Ferguson than, if she couldn't do the work, would cause an episode that you described of July 30, 1955?

Mr. Kaplan: Just a minute. I object to the question, if the Court please, upon the grounds it contains more testimony than it does question. She assumes many facts which are not [85] in issue and which have not been testified to by any witness today.

The Court: I think if you want to put it on the basis of assuming thus and so it probably would be a proper question.

Miss Reimann: Let's assume that then. As I recall that was, most of it, testified to.

(Testimony of John Finley Westfall, M.D.)

A. Assuming those things to be all true I would say this, that in any hypothetical instance of that nature or even this particular case the question that would arise in my mind would be whether or not the confusion, loss of memory and other symptoms which we have been over, were as a result of an aggravated hypertension or as the result of, say, actual brain injury at the time of an accident which was not apparent, or whether it was just due to the emotional shock of an accident.

Q. (By Miss Reimann): There is no evidence, objective evidence or symptoms of actual brain damage, is that correct?

A. That is correct, there is no objective evidence.

Q. If you had run or if an electroencephalogram had been run, wouldn't that tend to show that?

A. It might show it, may not.

Q. That is very often the purpose of running one, isn't it?

A. It very often is, yes.

Q. Isn't it quite possible that Mrs. Ferguson returned to [86] work prematurely, before she was ready to, after the accident?

A. It is possible.

Q. And her working there for that period of four weeks could have been a great factor in the episode that followed later on, as you say, of July 30th?

A. I don't know how great it would be. It could be a factor.

Q. Again let me ask this: This episode of July 30th, that was told to you by Mrs. Ferguson?

(Testimony of John Finley Westfall, M.D.)

A. That is correct.

Q. You had nothing from the doctor in regard to that?

A. I did not,

Miss Reimann: I believe that is all.

Further Redirect Examination

By Mr. Kaplan:

Q. As you say, Doctor, your date might have been incorrect?

A. Correct.

Mr. Kaplan: That is all.

The Court: That is all, Doctor.

(Witness excused.)

Mr. Kaplan: If the Court please, at this time I should like to read into evidence from the American Experience Table of Mortality, which states that the life expectancy of a person fifty-five years of age is 17.40 years. [87]

Now, if the Court please, also at this time I should like to read into evidence that the present value of one dollar per annum for seventeen years, at three per cent, is 13.1661 dollars; at three and one-half per cent, is 12.6513 dollars; at four per cent, is 12.1657 dollars and at four and one-half per cent, is 11.7072 dollars.

(Plaintiffs' Exhibits 4, 5 and 6 were marked for identification.)

Mr. Kaplan: I will ask Miss Reimann if she will agree that Plaintiffs' 4, 5 and 6 are accurate pictorial representations of the automobile in which Mrs. Ferguson was riding, after the accident?

Miss Reimann: You are asking me to question?

Mr. Kaplan: No, I am asking you if you will so stipulate.

Miss Reimann: No. I will not. And before the witness is called, your Honor, I have never seen the pictures before today and as far as the accident is concerned, the liability is stipulated to. I can't see that the pictures of the car have any bearing on the case at this point, and if they do have a bearing it is going to require us possibly to put on some testimony that would make a difference in the case, and the witness I would have to put it on I don't have here at this time.

The Court: I won't rule on it until [88] something is offered.

Mr. Kaplan: You will not so stipulate?

Miss Reimann: You mean that that is the car?

Mr. Kaplan: After the accident.

Miss Reimann: I will stipulate to that.

Mr. Kaplan: If the Court please, upon the basis of stipulation as to identity we offer Plaintiffs' Exhibits 4, 5 and 6 in evidence merely for the limited purpose of displaying to the Court the severity of the impact to which Mrs. Ferguson was subjected in the accident.

The Court: May I see them, please?

Miss Reimann: Again, your Honor, I make an objection because it would then bring in the size of the Government truck involved, the speed of the Government truck involved, which certainly would make a great difference as to the way the pictures portray the accident.

The Court: Do you stipulate that this is a substantially accurate representation of the vehicle immediately after the collision?

Miss Reimann: I have no knowledge. I will take Mr. Kaplan's word for that.

The Court: You will stipulate to that?

Miss Reimann: Yes.

The Court: They may be admitted for what they are worth. [89]

(Plaintiffs' Exhibits 4, 5 and 6 admitted in evidence.)

Mr. Kaplan: If the Court please, at this time the plaintiffs rest.

DENNIS BORN, M.D.

called as a witness herein, having been first duly sworn, testified as follows:

Direct Examination

By Miss Reimann:

Q. Will you state your name, please?

A. Dennis Born.

Q. You are a physician in Prescott?

A. I am.

Q. How long have you been a physician here?

A. Twenty-three years.

Q. And you are licensed to practice medicine in Arizona?

A. Yes.

Q. And how long have you been licensed to practice medicine, Dr. Born?

A. In Arizona, twenty-three years.

(Testimony of Dennis Born, M.D.)

Q. Have you been licensed any place else?

A. No, I have not.

Q. I wonder if you would relate to the Court your qualifications for practicing medicine as to the schools you went [90] to and training?

A. Bachelor of Science, University of Arizona; Doctor of Medicine, Rush Medical College, University of Chicago; internship in neurology, one month at Presbyterian Hospital in Chicago; six months Cedars of Lebanon in Los Angeles, Hollywood; one year L. A. County General, Los Angeles, and the balance has been private practice.

Q. In Prescott? A. Yes, and in the Army.

Q. Yours is a general practice? A. It is.

Q. Are you also a surgeon?

A. I am a Fellow of the American College of Surgeons, yes.

Q. Dr. Born, you made an examination of Mrs. Amanda Ferguson at the Government's request on June 26th of this year? A. I did.

Q. And at that time Mrs. Ferguson, I believe, came to your office, isn't that correct?

A. She did.

Q. And when you first examined her, I wonder if you will state to the Court exactly what your examination consisted of, how long it lasted, just exactly what you did?

A. She was presented to me on the table after having had her weight and height taken. [91]

Q. What was the weight and height, if you recall?

(Testimony of Dennis Born, M.D.)

A. She weighed 167 and three-quarters pounds. She was five feet four and one-quarter inches tall. I questioned her while she was seated on the table with regard to the history of her accident and so forth, which probably required a period of ten minutes. Then I gave her a general physical examination together with further questioning.

Q. What did your examination consist of?

A. Consisted of examination of her eyes, her nose, mouth, general body and blood pressure, urinalysis.

Q. I wonder if you will tell us the results of the examination you gave, say first in regard to her eyes?

A. Her eyes appeared normal. The pupils reacted to light and accommodation, the eye grounds appeared normal and there was no nystagmus or other abnormality noted.

Q. And the ears and nose?

A. The ears, the tympanum were intact and hearing was within normal limits as determined by the spoken voice. Her nose, she had good ventilation.

Q. Were there any abnormalities that you found in Mrs. Ferguson?

A. There was a slight depression of the soft tissues over the right eye, which was the site she indicated having been injured, a small laceration. There was a blood pressure of 206 over 130 at my determination. There was also minimal arteriosclerosis.

(Testimony of Dennis Born, M.D.)

Q. What else did you do in your examination or have done?

A. I examined her pelvically, heart, lungs, chest and palpation of the abdominal viscera and reflexes.

Q. How were Mrs. Ferguson's reflexes?

A. They were normal.

Q. I believe you stated you talked to her back and forth on several occasions during the examination?

A. I did.

Q. How did her thinking pattern and memory appear to you at that time?

A. She didn't appear to be at all evasive and her recollection, except for exact dates, was good.

Q. She could answer any questions you asked her?

A. Yes.

Q. There was no hesitancy in it?

A. She asked the party with her regarding specific dates is all.

Q. Aside from that there was no hesitancy?

A. No hesitancy or evasion I would say.

Q. You went into pretty thorough questioning of her as to past history and her present symptoms?

A. I did.

Q. You observed her walking at the time?

A. Yes, when she left the table and so forth. [93]

Q. How did that appear to you?

A. She appeared to walk normally and unhesitatingly.

Q. Did she need any help at all during the examination, was she able to handle her body all right?

(Testimony of Dennis Born, M.D.)

A. She did quite well, yes.

Q. Would you consider Mrs. Ferguson overweight, Doctor? A. I did.

Q. About how much?

A. I would say she is twenty-five or thirty pounds over weight.

Q. Did the weight seem to give her any trouble?

A. Not undue trouble, I wouldn't say.

Q. I believe you had some X-rays made, too, is that correct? A. I did.

Q. What did they reveal?

A. They revealed some arthritis of her spine; also an apparent old injury in the region of the third and fourth dorsal vertebrae with some angulation.

Q. Did you think that old injury, that apparent old injury would account for any of the pain she described to you?

A. She described a pain which radiated under her scapula, or shoulder blade, which could have been attributed to a lesion in this area or a neuralgia resulting from the same. [94]

Q. How long would you say you observed Mrs. Ferguson? Maybe I asked you that.

A. She was in the office I would say for a period of—that is during my observation, she was there longer than that, I would say between thirty and forty minutes.

Q. I believe you stated when you examined her, her blood pressure was 206 over 130?

A. That is correct.

(Testimony of Dennis Born, M.D.)

Q. Would you consider that, or you would consider that a high blood pressure, Dr. Born?

A. Yes.

Q. When a person comes in for an examination of this kind is it likely that the blood pressure might be a little higher at that time than it would be normally? A. It is probable, yes.

Q. You have to walk up quite a flight of steps into your office, don't you, Dr. Born?

A. Yes, if you come one way; the other they don't.

Q. You don't know which way Mrs. Ferguson came? A. I do not.

Q. Outside the high blood pressure that Mrs. Ferguson showed, did you find any other symptoms or any other objective symptoms, shall we put it, that weren't normal or average for a lady of her age who had had twelve children?

A. No, I would say not. [95]

Q. Nothing except that really showed up in your examination then?

A. That is right. Everything was consistent with her age and blood pressure.

Q. Dr. Born, are there many new drugs today or many new ways of controlling high blood pressure? A. Yes, there are.

Q. Has it in many cases been very successfully controlled? A. Yes.

Q. Do you think that Mrs. Ferguson's weight would have anything to do with her blood pressure?

A. Weight does affect blood pressure and per-

(Testimony of Dennis Born, M.D.)

sons that are overweight are more inclined to have hypertension.

Q. Would it be possible that a reduction of weight would help Mrs. Ferguson in controlling the blood pressure?

A. I would believe somewhat, I wouldn't be able to state how much.

Q. Now, Dr. Born, it was testified here today—I don't believe you heard the evidence—that in 1951, Mrs. Ferguson had a systolic blood pressure of 180 over 130; and in March of '56, it was 165 over 120; when you took it was 206 over 130. And then last Tuesday it was taken and it was 180 over 130, which was July 3rd, 1956, which is exactly the same as it was in 1951. I just give you that as a background for the question. Do you have an opinion, Dr. Born, if Mrs. Ferguson's blood [96] pressure could be controlled to a reading at least under which she previously was able to work and she worked in the capacity I guess as you know, as a cook, that if this blood pressure would be gotten to an extent it could be controlled to where it was previously, as to whether or not she would again be able to work as a cook?

Mr. Kaplan: If the Court please, I object to the question upon the ground there is no evidence in this case that the blood pressure of this lady can ever be controlled. Now, Dr. Born (Dr. Brazie) has testified of his attempt to control it and he has testified it resulted with the use of the only drugs

(Testimony of Dennis Born, M.D.)

he could find available that it still goes up and down. There is no evidence in this case that the blood pressure can ever be controlled at any one particular level at this particular time. I think the question is based on false premise and inaccurate.

The Court: I am going to let him answer the question.

A. It would be safe to assume if her blood pressure were controlled to the point where it was previously, regardless of the amount, to where she were asymptomatic she should be able to return to work.

Q. (By Miss Reimann): As a cook?

A. Yes, her previous occupation.

Q. Do you think, Dr. Born, with proper care and medication and weight control it is highly possible that Mrs. Ferguson's [97] blood pressure could be controlled to that extent, which I believe she worked with previously, 180 over 130?

Mr. Kaplan: I object to the question on the ground we are not concerned with what is highly possible, we are concerned with what is probable from a reasonable medical certainty.

The Court: No, he may answer.

A. It would be difficult to answer that question. There are cases which are difficult to control and some which are uncontrollable. However, most cases are controllable.

Q. Do you think the fact that her blood pressure last Tuesday was the same as it was in 1951 would be any indication that it is probable it could be controlled to that extent?

(Testimony of Dennis Born, M.D.)

A. I would think so, if it were identical to the original reading, yes.

Q. I believe possibly I asked you this, but there were no objective symptoms that you were able to find that was wrong with Mrs. Ferguson, outside of the high blood pressure?

A. Referable to her complaints?

Q. Yes. A. That is true.

Q. The day she was in to see you did she appear to be dizzy and confused?

A. No. And she stated she was not dizzy on that particular occasion. [98]

Miss Reimann: No further questions.

Cross-Examination

By Mr. Kaplan:

Q. Dr. Born, presumably one of the first things you asked Mrs. Ferguson when she came into your office was to relate to you what her present symptoms are, is that correct?

A. I first asked her a history of her accident and her progress since, then I asked her about her complaints.

Q. Present symptoms? A. That is right.

Q. She told you that she was weak when she walks? A. That is right.

Q. She told you she has headaches which began in the back of her neck and extend to the shoulder region? A. That is right.

Q. She told you she had nervousness manifested by lack of concentration and poor memory?

(Testimony of Dennis Born, M.D.)

A. She did.

Q. You performed all of these various tests which you previously related?

A. Yes, the usual examination.

Q. Yes. And at the conclusion of your examination, Doctor, you came to the opinion that Mrs. Ferguson was a truthful person and had told you the truth when she had [99] related her symptoms, didn't you? A. I felt so.

Q. She was not malingering or exaggerating?

A. She didn't seem at all evasive.

Q. Now, Doctor, you testified on direct examination that if Mrs. Ferguson's blood pressure can be controlled at the level at which it existed prior to the accident, and controlled to where it became asymptomatic, then you believed that Mrs. Ferguson would be able to return to work, is that correct?

A. I would assume she should be able to.

Q. That is based on the premise that her blood pressure can be controlled on a level and controlled so it can remain at the point where it was prior to the accident, is that right?

A. Yes, and to where she is asymptomatic.

Q. In other words, so that it is not causing her any loss of memory, so that it isn't causing her any weakness, general condition of weakness, and so that it isn't causing her any headaches? That is what you are saying? A. That is true.

Q. If it cannot be controlled to that level then her symptoms will continue and she will continue to be disabled, is that right, Doctor?

(Testimony of Dennis Born, M.D.)

A. I would expect them to continue if her blood pressure were not controlled. [100]

Q. Now, Doctor, is it not a medical, accepted medical fact, that persons who have hypertension and whose hypertension has been aggravated, that their blood pressure may vary up and may vary down at different intervals?

A. That is true in anyone's blood pressure.

Q. Anyone's blood pressure, right. If before an accident a person's blood pressure, is, say, 180 over 130, and then following an accident the blood pressure soars way up above that, then at times it comes down to that, then at times it may even go below that, but at other times it soars up again; and that condition of varying blood pressures occurs for a period of a year, then, Doctor, is it not true that it is not probable that that blood pressure can be controlled?

A. It depends entirely upon what has been used to control it.

Q. Let's assume that what has been used is every drug known to medical science. Do you know of any drug that can control it, Doctor?

A. Certain cases. You can control a case that won't work in another. And other cases can be controlled very simply by some of the newer drugs.

Q. Even the newest drugs will not work on some people, and the doctor has to keep experimenting until he finds a drug which will control the blood pressure of his individual patient, is that right? [101]

A. That is usually the way.

(Testimony of Dennis Born, M.D.)

Q. And sometimes you can't even find a drug in existence that will control that blood pressure, is that not true? A. That is true.

Q. So, Doctor, you have never examined Mrs. Ferguson over an extended period of time and followed her blood pressure readings over an extended period of time, have you?

A. Saw her only on a single visit.

Q. You are not familiar with her condition prior to the accident, her condition since the accident, and have not followed her blood pressure readings for an extended period of time?

A. I have not.

Q. So then, Doctor, you are not actually in a position to say with regard to Mrs. Ferguson whether or not her blood pressure will ever be controlled? A. No.

Q. And, Doctor, at the conclusion of your examination of Mrs. Ferguson it was your opinion and you so expressed that the pre-existing hypertension, Mrs. Ferguson's pre-existing hypertension could be aggravated by her injury, and that such an injury with the resultant aggravation could result in her present symptoms? A. That is true.

Q. And you expressed no other opinion in that regard? [102] A. No, that is true.

Mr. Kaplan: That is all.

(Testimony of Dennis Born, M.D.)

Redirect Examination

By Miss Reimann:

Q. Dr. Born, if a person has a blood pressure of 180 over 130 in 1951, and the next reading we have in evidence is 165 over 120, then your reading, which was 206 over 130, then one on July 3rd of 180 over 130, taking those all into consideration and realizing the conditions under which your blood pressure test was made, wouldn't you say that the control of Mrs. Ferguson's blood pressure is getting better and closer to what it was back in 1951?

A. No, I would say those were normal variations of a blood pressure of that type where the diastolic was consistently 130, I wouldn't be too concerned about the systolic pressure.

Q. Then actually you say her blood pressure today is not any worse than her blood pressure was back in 1951, is that correct?

A. Her diastolic pressure, apparently, with all the readings you have quoted, has varied only ten millimeters of mercury.

Q. And the one time it varied it varied down and not up from the reading in 1951?

A. That is right. [103]

Q. Taking all those into consideration, again I ask you with proper care and medication and weight control do you feel Mrs. Ferguson's blood pressure can be leveled out on a control?

Mr. Kaplan: If the Court please, this is a ques-

(Testimony of Dennis Born, M.D.)

tion which directly repeats a question which I asked the doctor and in which he said he couldn't express an opinion with regard to Mrs. Ferguson, as to whether or not her blood pressure could ever be controlled.

The Court: I will let him answer it. I take it by "do you feel," do you have an opinion?

Miss Reimann: Yes, sir.

A. In most cases we would expect it to level off; in her particular case I don't believe anyone could make a definite statement.

The Court: In other words, you are saying, Doctor, you couldn't be positive of it; you have an opinion it can be?

A. That is true. In most cases you can control.

Q. (By Miss Reimann): It was your testimony if it were so controlled you feel she could go back to gainful employment again?

A. I would say so.

Miss Reimann: No further questions.

Recross-Examination

By Mr. Kaplan: [104]

Q. If it were so controlled that she had no other symptoms than she presently has?

A. If she was asymptomatic from her blood pressure I would say there was no reason she couldn't return to work.

Mr. Kaplan: That is all.

(Testimony of Dennis Born, M.D.)

Further Redirect Examination

By Miss Reimann:

Q. From your observation of Mrs. Ferguson in regard to her thinking capacity, the way she answered you, as to dizziness, as to her eyes, anything like that, there was nothing that you could find, or nothing that was shown to you that would show that she couldn't think properly, that she was dizzy, that her eyes didn't focus properly, besides what she said to you, is that correct?

A. That is true. She also stated that on that particular day she had no dizziness and it was one of her good days.

Miss Reimann: No further questions.

Mr. Kaplan: No further questions.

The Court: Doctor, let me ask you one question. They haven't gone into it, but you, I believe, expressed an opinion that this accident in June of 1955, could possibly have been a precipitating factor in the disabling symptoms that Mrs. Ferguson has now. I believe that is what counsel asked you, if you didn't at the end of your examination [105] express that?

A. It is possible that could have aggravated it and brought on her present symptoms.

Q. Let me ask you, Doctor, if the disabling symptoms were to arise or show up something over a month after the accident, would that in any man-

(Testimony of Dennis Born, M.D.)

ner affect your opinion or cause you to have any difference in your opinion?

A. Well, I would say the effect on the blood pressure would possibly have been more emotional than from any actual injury to her system. In other words, it would be more of a result of an emotional instability or worry or concern or excitement at a particular time it affected her and that you would expect to come on within a week or two following the injury or event.

Q. In other words, the postponement of those disabling symptoms for over a month afterwards, would it in your opinion lessen the likelihood it was precipitated by the accident?

A. It could build up from the original shock or emotional upset over a period of some time and in the person's concern about their well being.

The Court: Thank you.

Redirect Examination

By Miss Reimann: [106]

Q. Doctor, could the person's concern—first I will give you some background. After the accident the testimony is that Mrs. Ferguson went back to work within a week, and that she worked for four weeks and then had to quit because she couldn't carry on with her work. And that this episode occurred on July 30th, which was after she got off work or had to quit work. Would the fact she wasn't able to carry on her work and had to give up her

(Testimony of Dennis Born, M.D.)

job at that time also have been a factor, or could have been the factor or caused this particular episode of July 30th when there was extreme apparent dizziness or nausea at that time?

A. It is possible that could have been a great factor, yes.

Q. Could have been a great factor?

A. Yes, anything that would disturb a person very much would affect their blood pressure.

Q. Isn't it true that if the accident were the cause of this it would have been more likely to happen at a date more closely to the date of the accident than after she had gone back to work and worked for four weeks and had to give up her work?

Mr. Kaplan: If the Court please, the testimony in this case is that this lady was troubled with these symptoms all during the time she tried to work and she finally saw she couldn't work any longer. I don't know what Miss Reimann [107] is building up to, but she would make it appear that this lady was perfectly normal until all of a sudden at the end of four or five weeks then this whole thing came on, which is not the evidence.

The Court: I will permit the witness to answer.

The Witness: Will you repeat the question?

(The last question was read.)

A. I would say the symptoms could come on at any time immediately following an accident to a period up to two or three months even. And the time factor would not be too important.

(Testimony of Dennis Born, M.D.)

Q. (By Miss Reimann): Dr. Born, if a person has a blood pressure of 180 over 130 and has had it for several years, could anything upset her enough that it would cause these symptoms, would it take a big thing or a small thing, or can you answer that question?

A. I am afraid that would be almost impossible to answer. Some people with even greater hypertension than she has have no symptoms and others with less have symptoms.

Miss Reimann: No further questions.

Mr. Kaplan: No further questions.

The Court: That is all, Doctor.

(Witness excused.)

Miss Reimann: The Government rests, your Honor.

Mr. Kaplan: We have no rebuttal, your Honor.

The Court: Do counsel want to argue the matter now?

Mr. Kaplan: If the Court please, I appreciate a matter tried to the Court such as this and extensive argument is not called for. But I might make a brief statement based on the testimony as it has appeared here.

The liability is admitted and of course that is out of the case and the question is how much have Mr. and Mrs. Ferguson been damaged by reason of the accident.

(Argument by counsel.)

The Court: Is Dr. Arnold available?

Mr. Kaplan: Dr. Arnold is available if we should have him leave Kingman with no other doctors around. That was the reason we didn't call Dr. Arnold.

The Court: I want to look at the exhibits and check my notes. It will be taken under advisement and I will rule on it in a few days. [109]

Reporter's Certificate

State of Arizona,
County of Pima—ss.

I, Fred L. Baker, do hereby certify that I am an Official Court Reporter in the United States District Court, District of Arizona, and that as such Official Court Reporter, I attended the hearing in the foregoing entitled cause; that I took down in shorthand all the oral testimony adduced and proceedings had; that such shorthand was reduced to writing under my supervision and the foregoing 109 pages of typewritten matter contain a partial true and correct transcript of my shorthand notes taken by me as aforesaid.

Witness my hand this 22nd day of August, 1956.

/s/ FRED L. BAKER,
Official Court Reporter.

[Endorsed]: Filed August 28, 1956. [110]

[Title of District Court and Cause.]

Certificate of Clerk

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Edward A. Ferguson, et ux, Plaintiffs, versus United States of America, Defendant, numbered Civ-452 Prescott, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries and docket entry of July 9, 1956, are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that the said original documents, and said copies of the minute and docket entries, together with the original exhibits transmitted herewith, constitute the record on appeal in said case, and the same are as follows: to wit:

1. Plaintiffs' Amended Complaint.
2. Answer of Defendant United States of America.
3. Defendant's Interrogatories to Plaintiffs.

4. Plaintiffs' Answer to Interrogatories
5. Plaintiffs' Request for Admissions.
6. Defendant's Answers to Plaintiffs' Request for Admissions.
7. Minute entry of July 6, 1956 (Proceedings of trial).
8. Minute entry of July 9, 1956 (Order for judgment, and directing Clerk to enter judgment for plaintiffs).
9. Civil Docket Entry of July 9, 1956 (Clerk's notation of entry of judgment in civil docket under Rule 79 (a)).
10. Plaintiff's Motion to Alter or Amend Judgment, or in the alternative, for a new trial.
11. Minute entry of July 13, 1956 (Order for submission of proposed findings of fact and conclusions of law).
12. Plaintiffs' Proposed Findings of Fact and Conclusions of Law.
13. Findings of Fact and Conclusions of Law filed July 19, 1956 (being the same document as No. 12 above).
14. Plaintiffs' Motion to Amend Findings of Fact.
15. Minute entry of August 13, 1956 (Order denying motion to alter or amend judgment or for new trial and motion to amend findings), docketed August 13, 1956.
16. Plaintiffs' Notice of Appeal.
17. Plaintiffs' Bond on Appeal.
18. Plaintiffs' Designation of Record on Appeal.
19. Reporter's Transcript of Proceedings.

I further certify that all original exhibits admitted in evidence are transmitted herewith as a part of this record on appeal, to wit:

Plaintiffs' exhibits 1 to 6 inclusive.

Witness my hand and the seal of said Court this 27th day of September, 1956.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 15320. United States Court of Appeals for the Ninth Circuit. Edward A. Ferguson and Amanda Ferguson, Husband and Wife, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed: September 29, 1956.

Docketed: October 8, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
Ninth Circuit

No. 15320

EDWARD A. FERGUSON and AMANDA FER-
GUSON, Husband and Wife,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS

Appellants above named hereby make the following statement of points upon which they intend to rely in the above appeal:

1. Findings of Fact No. 4, insofar as it finds that the aggravation of Amanda Ferguson's pre-existing hypertensive heart condition caused only temporary total disability, is clearly erroneous in that there is no credible evidence to support said finding and it is contrary to the uncontradicted evidence that her condition was aggravated to the extent that she is permanently disabled.

2. Findings of Fact No. 5 (a) is clearly erroneous in that there is no evidence to support said finding and it is contrary to the uncontradicted evidence that Mrs. Ferguson had been deprived of \$3,300.00 in earnings at the time of the trial.

3. Finding of Fact No. 5 (b) is clearly erroneous in that there is no evidence to support said find-

ing, and it is contrary to the evidence that Mrs. Ferguson, at the time of the accident, was earning, and is now capable of earning, \$66.00 per week and that she is permanently disabled.

4. Finding of Fact No. 5 (c) is clearly erroneous in that said sum is grossly inadequate in view of the uncontradicted evidence as to the nature and extent of the injuries sustained by Mrs. Ferguson and their effect upon her and in view of the findings made by the trial court.

5. Conclusion of Law No. II is erroneous in that it is based upon the erroneous findings hereinabove specified.

6. The judgment is grossly inadequate, is not justified by the evidence and is contrary to law.

MOORE & ROMLEY,

By /s/ JARRIL F. KAPLAN,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed October 8, 1956.